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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. [REDACTED] 30

WILLARD IRWIN SINGER AND MARTIN H. SINGER,
Petitioners,

vs.

THE UNITED STATES OF AMERICA.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

PETITION FOR CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE
THIRD CIRCUIT.

JOHN W. CRAGUN,
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Of Counsel.



INDEX.

SUBJECT INDEX.

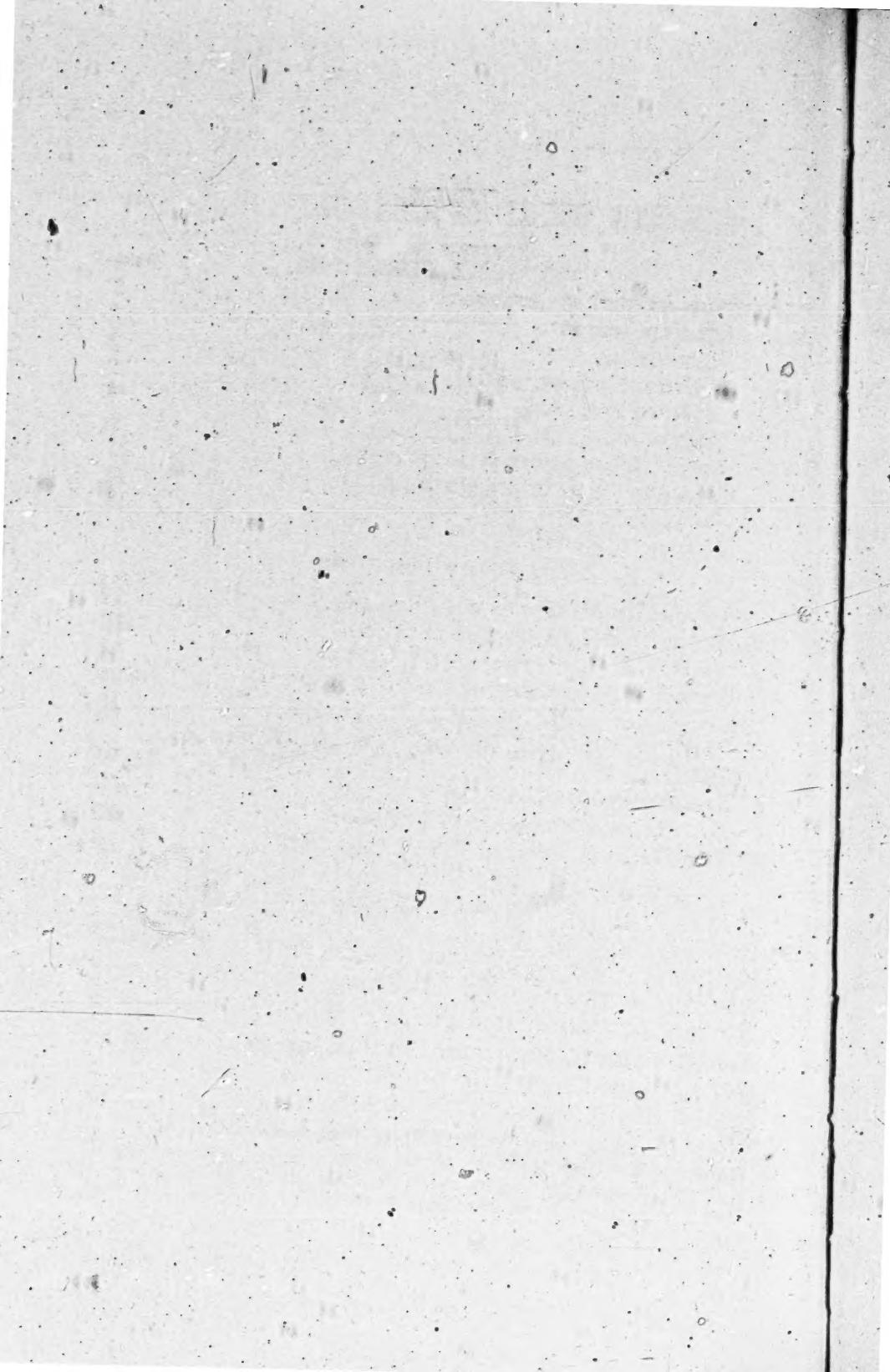
	Page
Petition for writ of certiorari	1
Opinion below	2
Jurisdiction	2
Questions presented	2
Statutes involved	3
Statement	4
Specification of errors to be urged	11
Reasons for granting the writ	11
Conclusion	16

TABLE OF CASES CITED.

<i>Bartchy v. United States</i> , 319 U. S. 484	14
<i>Berger v. United States</i> , 295 U. S. 78	12
<i>Houlihan v. United States</i> , 316 U. S. 700	14
<i>O'Connell v. United States</i> , 126 F. (2d) 807	11, 14
<i>United States v. O'Connell</i> , 126 F. (2d) 807	11
<i>United States v. Offutt</i> , 75 App. D. C. 344, 127 F. (2d) 336	11, 14
<i>United States v. Resnick</i> , 299 U. S. 207	16
<i>United States v. Tynen</i> , 11 Wall. 88	16
<i>United States v. Winter</i> , 38 Fed. Supp. 627	16

STATUTES CITED.

Criminal Code, Sec. 37 (18 U. S. C. 88)	3, 4, 14, 15
Espionage Act, 50 U. S. C. 33, 34	15
6 Fed. Reg. 6609	7
7 Fed. Reg. 5354	7
Purdon's Penna. Stats. Ann., Title 44, Sec. 11	11, 15, 16
Rules XIII of Criminal Appeals Rules	2
Sedition Conspiracy Act, 18 U. S. C. 6	15
Selective Training and Service Act of 1940, Sec. 11, (50 U. S. C. App. 311)	3, 15



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 708

WILLARD IRWIN SINGER AND MARTIN H. SINGER,
Petitioners,
vs.

THE UNITED STATES OF AMERICA.

**PETITION FOR CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE
THIRD CIRCUIT.**

*To the Honorable, the Chief Justice and the Associate
Justices of the Supreme Court of the United States:*

Willard Irwin Singer and Martin H. Singer,¹ by their attorney, pray that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Third Circuit entered in the above cause on November 29, 1943.

¹ An additional party, Walter William Weel, was a co-defendant in the indictment and a party to the appeal below. He is not a party to this petition. Counsel for petitioners has not been advised whether Weel will file a separate petition to this Court.

Opinions Below.

The District Court of the United States for the Western District of Pennsylvania (Gibson, D. J.) rendered an opinion (R. 4) which is reported in 49 F. Supp. 912. The opinion of the United States Circuit Court of Appeals for the Third Circuit (R. 146, *per curiam*, Biggs, Goodrich and McLaughlin, JJ.) is not as yet reported.

Jurisdiction.

The judgment of the United States Circuit Court of Appeals for the Third Circuit was entered November 29, 1943 (R. 147). Petition for rehearing was entertained, and was, on January 12, 1944, denied (R. 152). The statutory provision believed to sustain the jurisdiction of this Court is § 240(a) of the Judicial Code as amended. See also Rule XIII of the Rules of Practice and Procedure after Plea of Guilty; Verdict or Finding of Guilt in Criminal Cases, promulgated by this Court May 7, 1934. Excluding Sundays (January 16, 23 and 30; February 6 and 13) and Lincoln's Birthday (February 12), if it be a holiday in Pennsylvania,² time for filing the petition extends to February 17, 1944.

Questions Presented.

1. Whether petitioners are guilty of conspiracy to violate Sec. 11 of the Selective Training and Service Act of 1940.
2. Whether conspiracy to violate Sec. 11 of the Selective Training and Service Act of 1940 in respects other than to "knowingly hinder or interfere in any way by force or violence with the administration of this Act" is punishable

² Title 44, Purdon's Penna. Stats. Ann., § 11, places Lincoln's Birthday on the same plane with July 4th, Christmas, etc. However, it appears from the Pennsylvania statute that such days may be "legal holidays" only as respects some incidents in connection with certain negotiable instruments, etc.

under the terms of Sec. 11 of that act, or under the general conspiracy statute, Sec. 37 of the Criminal Code (18 U. S. C. § 88)—and, therefore, whether an overt act need be alleged.

Statutes Involved.

Sec. 11 of the Selective Training and Service Act of 1940, c. 720, 54 Stat. 885, 894-5, 50 U. S. C. App. §311, provides, as follows:

“Sec. 11. Any person charged as herein provided with the duty of carrying out any of the provisions of this Act, or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said Act, rules, regulations, or directions who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate as to the fitness or unfitness or liability or nonliability of himself or any other person for service under the provisions of this Act, or rules, regulations, or directions made pursuant thereto, or who otherwise evades registration or service in the land or naval forces or any of the requirements of this Act, or who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces or any of the requirements of this Act, or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect to perform any duty required of him under or in the execution of this Act; or rules or regulations made pursuant to this Act, or any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto, or conspire to do so, shall, upon conviction in the district court of the United States having jurisdic-

tion thereof, be punished by imprisonment for not more than five years or a fine of not more than \$10,000, or by both such fine and imprisonment, or if subject to military or naval law may be tried by court martial, and, on conviction, shall suffer such punishment as a court martial may direct. No person shall be tried by any military or naval court martial in any case arising under this Act unless such person has been actually inducted for the training and service prescribed under this Act or unless he is subject to trial by court marital under laws in force prior to the enactment of this Act. Precedence shall be given by courts to the trial of cases arising under this Act." (Italics added)

Section 37 of the Criminal Code, 18 U. S. C. §88, provides, as follows:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both."

Statement.

Petitioners, father and son, were indicted in the United States District Court for the Western District of Pennsylvania, together with one Walter William Weel, for conspiracy to evade service in the armed forces as required by the Selective Training and Service Act of 1940; they were convicted and sentenced; the judgment was affirmed by the court below. The indictment did not charge the commission of an overt act.

Petitioner, Willard Irwin Singer, is a lawyer who had up to the time of his indictment been practicing his profession in Pittsburgh, Pennsylvania (R. 81-2). Petitioner, Martin H. Singer, Willard's father, is a man of slight education

who was engaged in the women's dress business until wiped out in the depression and forced to close in 1933 or 1934 (R. 131). After Martin, the father, closed his business, Martin and his wife, Elizabeth, had no income of their own, but were dependent upon their son, Willard, for their support (R. 132-3). From that time to the date of trial Willard had paid all of the household and other living expenses of his parents. (R. 85-87, 133-136; Exhibit 5, file of papers taken from the local draft board file of Willard, particularly Exhibit C attached to the brief of Willard I. Singer filed with the local board.)

In addition to the practice of the law, Willard had certain properties which he owned and managed. One of these was Martin's Grill, Inc., a corporation of which he was the sole stockholder (R. 83). The principal facts relied upon by the Government for conviction were based upon the affairs of this corporation. This business, a restaurant business, commenced operations in about July, 1937 (R. 83). It had never been a money-making proposition, but had lost money from the outset and down to the date of the trial (R. 83-4). Martin, who had been without an occupation since 1934, came to the grill from day to day, so far as he was able, from about the time the grill opened and did what he could to help look after his son's interest in the grill. R. 83, 134, *et seq.* Willard, the son, came in the evenings and conducted the affairs of the grill and always acted as manager of the company (R. 97).

Martin was not in good health (R. 135-6). His limited experience apparently fitted him for no regular occupation and at the time of the trial he was 58 years of age (R. 83, 132). Not unnaturally, he did, however, when opportunity offered through the opening of the grill, devote time and attention to attempting to salvage his son's investment. That he was never regarded as an employee of the grill is shown by the fact that he was never paid wages or a salary

(R. 85, 135),³ notwithstanding the fact that the payment of a salary and deductions for social security would have stood to relieve Willard of some of the burden of support of his father since Martin would have become eligible for old-age benefits under the Social Security system.

Under the Selective Service system Willard filled up the usual questionnaire (Exhibit 1) in which he claimed his father and mother as dependents and claimed that his wife, although employed at a salary, was partially dependent upon him. There has been no contention by the government in this case that the mother, Elizabeth H. Singer, was not totally dependent upon her son, or that his wife, Florence King Singer, was not partially dependent upon him, or that he did not with his wife maintain a bona fide family relationship in their home. Thus, far, then, it is clear that under the selective-service rules and regulations in effect at the time (June, 1942) Willard could properly have been classified only III-A.⁴ The contention, however, is that in

³ To prove that Martin actually had received a salary, the government introduced the transcript of testimony of Martin in the hearing on appeal from an order of the Pennsylvania Liquor Control Board, October 28, 1940. Government Exhibit No. 7. This transcript was scarcely fairly dealt with below; for while it is true, in answer to a final question of the cross-examiner, that Martin answered "Yes" to the question "Does he [Willard] pay you a salary?"—still he testified as to his employment at the grill only that "I would say in a way I am employed," and in answer to the question "What is your connection with Martin's Grill?" he replied, "No connection except that I go over there and look over some matters for Willard." But however Martin may have regarded his employment at that time (October, 1940), it is plain that he never did actually receive a salary; and there was no pretense at the trial that he had done so. Not only is the testimony of petitioners unrefuted, but it may well be assumed that if the contrary were true, it would have been developed from the books, records, checks, returns, etc., of the corporation during the investigation of this case by the F. B. I.

⁴ See the charge in the District Court in the transcript of testimony filed with the clerk, wherein the jury was told that to be a dependent of a registrant a person must be the wife or child of the registrant with whom the registrant maintains a bona fide family relationship in their

claiming the father as a dependent Willard acted to secure an improper III-A deferment for dependency. His father filed two affidavits of dependents (Gov't Exhibits 2 and 3) which were alleged to have identified him in this conspiracy.

The facts were fully set up before the local board upon a hearing after it had classified Willard in Class I-A (Gov't. Exhibit 5); and Willard at that time made a full disclosure to the board of his father's work at the grill—even bringing in his social-security returns to prove that his father had received no income from what he did for the grill (R. 96-7); Gov't. Exhibit 5 (and Exhibit G attached to Gov't. Exhibit 5). One of the board members knew of Martin's work at the grill before the hearing held June 9, 1942; and though he disqualified himself from sitting in the case he had suggested to Willard before the hearing of June 9, 1942, the advisability of supporting his assertion that his father had not received income from his occupation at the grill (Testimony of Willard I. Singer on rebuttal in the transcript of testimony in the record before the court below, p. 187-8.⁵).

home, or, if a parent, must depend for support upon the registrant or be a person of any age physically or mentally handicapped whose support the registrant has assumed in good faith.

It is believed that the District Court may have inadvertently used the definition of "dependent" from the regulations under the Selective Training and Service Act of 1940 as they existed at the time of the trial rather than as they existed at the time the alleged offense took place (June, 1942). The Selective Service Rules and Regulations (§ 622.32) provided in June, 1942, that a wife or parent must depend for support upon the registrant, and provided that reasonable doubts as to dependency should be resolved in favor of the dependency. See 6 Fed. Reg. 6609. The regulations were amended July 11, 1942—about one month after Willard's hearing—to provide in accordance with the charge of the District Court. 7 Fed. Reg. 5343. The change in regulations is, of course, immaterial here, since Willard properly would be classed III-A under either set of regulations.

⁵ The record was not printed in the court below, under its rule requiring partial reprints of testimony by each party as an appendix to the respective briefs. The printed record which accompanies this petition for certiorari is comprised of certified copies of these appendices to briefs, plus the

Viewed in the most charitable light, however, the board's memory must have become faulty; for, apparently disregarding the fact that full disclosure as to Martin's working at the grill had been made, numerous F. B. I. agents, apparently at the instigation of the board, in the months following that hearing undertook to go to the grill and discover that the father, Martin, was engaged there in tending the cash register, chatting with customers, making sandwiches, tending the bar, swatting flies, etc.—as he could be useful (R. 38-39, 43-46, 34-36, 47-69).

⁸ The representatives of the government, then, instituted his prosecution on the theory that Willard and Martin had falsely represented that the father was *not employed*. As a matter of fact, as shown above, it had never been any secret before the local board that the father was engaged in helping out around the grill. The only question before the board had been whether, notwithstanding that occupation, he was actually *dependent* upon Willard. So far as Willard and Martin are concerned, the Government's theory at the trial, at least initially, rested upon this same misapprehension that petitioners had represented that the father did *not work*, instead of that he did work but had received no income from it and had always actually been *dependent* upon Willard (R. 21). The testimony that Willard had represented his father as not employed, however, was vitiated in the cross-examination of the member of the board who gave it (R. 25-6).

An unrelated and different problem was posed with respect to Walter William Weel. Weel had been engaged in the business of selling coal for some 19 years (R. 115).

proceedings in the court below (R. 152). However, under stipulation of the parties filed with the clerk, the entire record and original exhibits as filed with the court below have been lodged with the clerk of this Court and may be referred to on this petition by either party. For the hearing on the merits should certiorari be granted, a somewhat fuller and better record will be printed.

Commencing in the fall of 1940, he engaged Willard Singer to assist him in connection with an enterprise whereby he would open certain strip coal mines in Pennsylvania and become a coal producer (R. 115-116). Since, apparently, the business of operating a strip mine is in considerable part a matter of proper contract arrangements and litigation, Weel agreed to underwrite the financial side of the operation and to pay Willard Singer 25% of the net profits of the operation for the latter's services in drafting contracts for truckers, for leases for stripping equipment, and for the truckage and delivery of the coal on rail contract (R. 116, 130), handling the litigation, making a thorough search of the law, etc. (R. 92).

Willard Singer apparently did not regard his services for Weel as affecting his classification with the Selective Service system. At no time did he make any request for deferment based on these facts (R. 107). The hearing before the local board was held one or two days before or after Weel returned from an extended business trip to Chicago (R. 128). Weel learned of Willard's 1-A classification and thereafter got in touch with the Coal Commission Board in Pittsburgh (R. 126) about the matter of securing a deferment for Singer and then, from a folder which the National Coal Association had sent to members of the Western Pennsylvania Coal Operators' Association detailing what the members should do to get "necessary-man" deferments, Weel prepared an affidavit to support claim for occupational deferment (which claim Willard had not made) and sent it with a letter to the local board. (R. 130, Gov't Exhibit 4). He did not consult Willard Singer in the preparation of this affidavit but followed the form which had been furnished to him (R. 95, 119). Weel had graduated from law school and there is no inherent reason to doubt his ability to follow the instructions sent by his association in this respect (R. 122-3). That he was not as-

sisted by Willard was proved by independent testimony (R. 142-4). At the same time, it must be admitted that his allegations as to the nature of the employment and irre-placeability of Willard Singer (Gov't Exhibit No. 4) went probably too far in the claims respecting Singer's connection with Weel's business. These claims as to Singer's essentiality were apparently based on nothing more than that Singer had made a special study of the mining law as it affected Weel's operation, was completely acquainted with the three stripping operations that had been undertaken and other leases which had been made, and had taken some part in making arrangements for the disposal of the coal which, at the time the claim for deferment was made, they reasonably expected to produce (R. 94). For it seems apparent that any other competent lawyer with the same amount of study could have qualified to take care of the litigation and contracts. Perhaps Weel's statements in the claim for occupational deferment were not false, considering the status of his business at the time they were made; perhaps he was only selfishly considering his own business interests. But even if they were outright false statements, still there is no basis for inference that either of the Singers participated in the scheme of Weel to secure the deferment; neither of them at any time advanced this claim, and Willard had not even mentioned his employment by Weel in his questionnaire.⁶ If, therefore, Weel's statements are false, he can be prosecuted for them. But an indictment for conspiracy should not be made the vehicle where Weel alone is responsible and can be punished for his wrong.

The trial was held on the first anniversary of Pearl Harbor (R. 8). The jury found all three defendants guilty.

⁶ The prosecutor seems, from his cross-examination of Willard, somewhat petulant over the fact that Willard had not supported Weel's claim in Willard's own questionnaire (R. 107-8). Manifestly, if there were a conspiracy on the point, there would have been a concert of action on the part of Singer as well as Weel to secure the occupational deferment.

Specification of Errors to be Urged.

The court below erred, as follows:

1. In sustaining the judgment of conviction.
2. In failing to reverse the judgment of conviction for failure of the District Court to grant the motion for directed verdict on grounds of insufficient evidence.
3. In failing to reverse the judgment of the District Court for its error in overruling defendant's motion in arrest of judgment.
4. In failing to reverse the judgment of the District Court for its error in overruling demurrers to the indictment for failure to allege the commission of an overt act.

Reasons for Granting the Writ.

1. Petitioners are not guilty. The facts are set out in the statement, *ante*. Probably the faulty recollection of the local board as to the representations of Willard was the reason for the prosecution; ⁷ but when the member of the board (Hirsch, R. 19-26) who had testified boldly and positively to the alleged misstatements of Willard the night of his hearing to the effect that Martin had no employment whatever, broke completely in his testimony on cross-

⁷ At the same time, even if the theory upon which this prosecution was founded were proven correct, this case is not remotely as serious as others prosecuted for conspiracy to violate § 11 of the Selective Training and Service Act of 1940. Here, as we have shown above, notwithstanding the representations as to Martin's dependency, Willard would properly have been placed in III-A if the regulations were followed. In the case of *United States v. O'Connell* (C. C. A. 2d, 1942), 126 F. 2d 807, dealt with in point 2, below, there was a conspiracy with the head of a local draft board to pay a selective-service investigator a bribe of \$1000 to return a favorable report on the deferment of a registrant. In *United States v. Offutt* (1942), 75 App. D. C. 344, 127 F. 2d 336, also dealt with in point 2, the conspiracy was to have the registrant wilfully fail to report for induction.

examination, the district attorney ought to have reconsidered his case, consistently with his obligations defined in *Berger v. United States*, 295 U. S. 78, 88. On cross-examination this member recalled that the employment of Martin Singer had been a subject of discussion; that the board had had before it the social-security records of the grill and that their only concern at that time was whether there was any income to Martin Singer or not—"that was the thing we were particularly interested in; whether he went there and was unpaid, we were not interested. We were trying to ascertain whether this man had an income; that is the only thing we were interested in". The other member who heard Willard Singer the night of the hearing likewise testified (R. 27) that the question of the father's employment had been discussed.

Nonetheless, the district attorney paraded before the jury no fewer than eleven witnesses, some of them F. B. I. agents, to prove that Martin Singer performed some duties in the grill and was seen there at various hours between noon and 2 a. m. That is to say, when the theory upon which the trial had been instituted—i. e., that Martin Singer had been represented as not working—was proved by the prosecution witnesses themselves upon cross-examination to have a misapprehension, nevertheless, the jury was permitted to have this erroneous theory buttressed and reinforced through the testimony of numerous witnesses. Beyond doubt Martin Singer never received any income from his employment at the grill. Beyond doubt after the grill opened, just as before, he relied for the necessities of life upon his son. No effort was made by the government to disprove these facts and the facts themselves are proved beyond any possible cavil. Even the courts below seemed far more concerned with the question of the failure of the indictment to plead an overt act than with the reality of the substantive offense alleged. The opinion of the Third Cir-

cuit Court of Appeals was devoted exclusively to the question of pleading an overt act in an indictment, the court regarding the questions whether petitioners were guilty "do not require discussion" (R. 146).

It is entirely consistent with Willard's lack of guilty intent in this situation that for some time prior to the date of his reclassification by the board—and indeed in the months following the hearing of June 9, 1942, and prior to his indictment—he persistently attempted to secure a commission in the various branches of the armed services (R. 101-3). He was not, as in the recurrent cases of conscientious objectors and alleged ministers of the gospel which are filling the reports on Selective Service violations, attempting to avoid any service to his country in its time of peril. It is true that he asked for a commission in the armed services because his experience, education and age satisfied the usual qualifications required *in limine* for service as a commissioned officer; and by reason of his financial position and the consistent losses he had suffered in the affairs of the grill he had hoped better to be able to conserve his personal estate and take care of his family on the somewhat larger compensation of a commissioned officer (R. 104-5). After he was indicted he made outright attempt to enlist (R. 106). In these circumstances it is difficult to understand what possible purpose of the Selective Service system is served in the prosecution of this registrant for attempt to evade the law, thereby preventing his induction.

There can be no doubt that this Court may consider the question whether petitioners can properly be held guilty under this evidence. Despite the "two-court rule", this Court, apparently to make sure that the public's natural feeling of abhorrence in time of war for persons accused of violation of the Selective Service Act shall not produce substantial miscarriage of justice, has reviewed such cases

on the facts. *Bartchy v. United States*, 319 U. S. 484, 485, 489.

2. Certiorari must be granted because of a conflict between circuits.

In this case, and in *O'Connell v. United States* (C. C. A. 2d 1942), 126 F. 2d 807, cert. denied *sub nom. Houlihan v. United States*, 316 U. S. 700, No. 1223, O. T. 1941, on which the court below relied (R. 146), it was held that no overt act need be pleaded in an indictment for conspiracy to violate § 11 of the Selective Training and Service Act of 1940.

In *United States v. Offutt* (1942), 75 App. D. C. 344, 127 F. 2d 336, it was held that pleading an overt act was an essential in an indictment for conspiracy to violate § 11 of the Selective Training and Service Act of 1940. (Syls. [1, 2], [7, 8]) [9], *passim*). The court specifically holds, 127 F. 2d at p. 340, that "To sustain these charges there must be proved, *inter alia*, an overt act."

It may be noted that the decision of the *Offutt* case intervened (April 13, 1942) between the date of the *O'Connell* decision (March 24, 1942) and the date the petition for certiorari in that case was filed in this Court (May 7, 1942). Neither party called the decision to the attention of this Court; in fact, both petitioner⁸ and respondent⁹ in that case represented—apparently in ignorance of the then-recent decision in the *Offutt* case—that there was no conflict.

It would be no distinction of the *Offutt* case to assert that there the prosecution was for a violation of Title 18, U. S. C. § 88, the general conspiracy statute, instead of for a viola-

⁸ Petition for Certiorari, No. 1223, O. T. 1941, filed May 7, 1942, page 10.

⁹ Brief in Opposition, No. 1223, O. T. 1941, filed May 27, 1942, page 8.

tion of the "conspiracy provision"¹⁰ of § 11 of the Selective Training and Service Act of 1940 itself (50 U. S. C. App. § 311). For the two cases then could not subsist together unless (1) Congress would have power to provide for successive punishments of the same offense (conspiracy in each case), and unless (2) it be concluded that Congress in adopting § 11 of the Selective Training and Service Act of 1940 intended both (a) that the conspiracy provision therein should extend to all offenses denounced by the section, and also (b) that the general conspiracy statute at the same time should be applicable to all such offenses. There is no reason to believe even that Congress may have intended that a prosecutor should have the power of electing between these two statutes and their differing penalties (or in certain cases, of selecting among the provisions of these two statutes plus the Espionage Act [50 U. S. C. § 33, 34], and the Seditious Conspiracy Act [18 U. S. C. § 6]). It is felt that a proper review of the legislative history of § 11 of the Selective Training and Service Act will demonstrate that the words "or conspire to do so" contained in that section were intended to relate narrowly to the particular clause to which they were addressed (and which clause has no application to this prosecution), leaving the general conspiracy statute in full force as to all other matters. Both statutes would be given effect as thus construed together; and this construction is, of course, to be preferred

¹⁰ On the merits, it will be petitioners' contention that there is no provision of § 11 of the Selective Training and Service Act denouncing conspiracy to violate its terms other than the provision denouncing as criminals "any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto, or conspire to do so." Whether the final words "or conspire to do so", relate to the entire § 11, or only to violations contemplating force and violence, is one of the substantial matters to be disposed of on the merits in connection with the problem whether § 11 or 18 U. S. C. § 88 controls in this case.

in the interpretation of statutes. *United States v. Tynen*, 11 Wall. 88, 92.

There are other factors which induce the same conclusion, such as the fact that even in the decision of the Second Circuit in the *O'Connell* case it was recognized that the contrary and broader construction there adopted was doubtful, and the fact that the propriety of such broad construction was also doubted in the present case by the court below (R. 146) and by the District Court (R. 4). Such doubts ought to have been resolved in favor of holding applicable the provisions of 18 U. S. C. § 88 with its two-year-imprisonment term, rather than § 11 of the Selective Training and Service Act of 1940 with its five-year-imprisonment term. *United States v. Resnick*, 299 U. S. 207, 209.

In addition to the *Offutt* case, in the case of *United States v. Winter* (E. D. Pa., 1941), 38 F. Supp. 627, the prosecutor proceeded under 18 U. S. C. § 88. Since the conviction was there sustained under that statute, the case represents a further conflict with the decision below and in the *O'Connell* case as to the statute which applies.

Conclusion.

The writ should be granted.

Respectfully submitted,

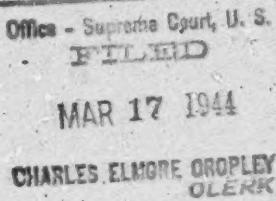
JOHN W. CRAGUN,
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Supreme Court of the United States

OCTOBER TERM, 1943.

No. [REDACTED] 30

WILLARD IRWIN SINGER and MARTIN H. SINGER, Petitioners,

v.

THE UNITED STATES OF AMERICA.

PETITIONERS' REPLY TO BRIEF IN OPPOSITION.

It is no answer to the petition's claim of conflict between circuits that the decision in the present case is correct and that the decision in the conflicting *Offutt* case (75 App. D. C. 344, 127 F. 2d 336) is wrong. Brf. in Opp., pp. 10-11. The cases differ as to the statute which is applicable, the same offense being involved in both cases; and both statutes cannot subsist together. Whether respondent is right in its contention that the decision below is correct in this respect (or whether petitioners are right) is premature, and is a matter to be settled on the merits. As can be fully shown only on the merits, the matter is by no means the simple problem, as respondent supposes (Bfr. in Opp. p. 11), of a "later special statute" obtaining over the provisions of an earlier, general statute.

However this Court may decide on the merits, it has been well understood that it boots a respondent nothing, in the event of a conflict, to oppose the writ on the ground that the decision below is right. ROBERTSON & KIRKHAM, *Jurisdiction Sup. Ct. U. S.*, § 292, p. 564, notes 4 to 6.
The writ should be granted.

Respectfully submitted,

JOHN W. CRAGUN,
Counsel for Petitioners.

WILLIAM STANLEY,
Of Counsel.

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No. [REDACTED] 30

In the Supreme Court of the United States

October Term, 1943

WILLARD IRWIN SINGER AND MARTIN H. SINGER,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE THIRD
CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION



INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement	4
Argument	8
Conclusion	11

CITATIONS

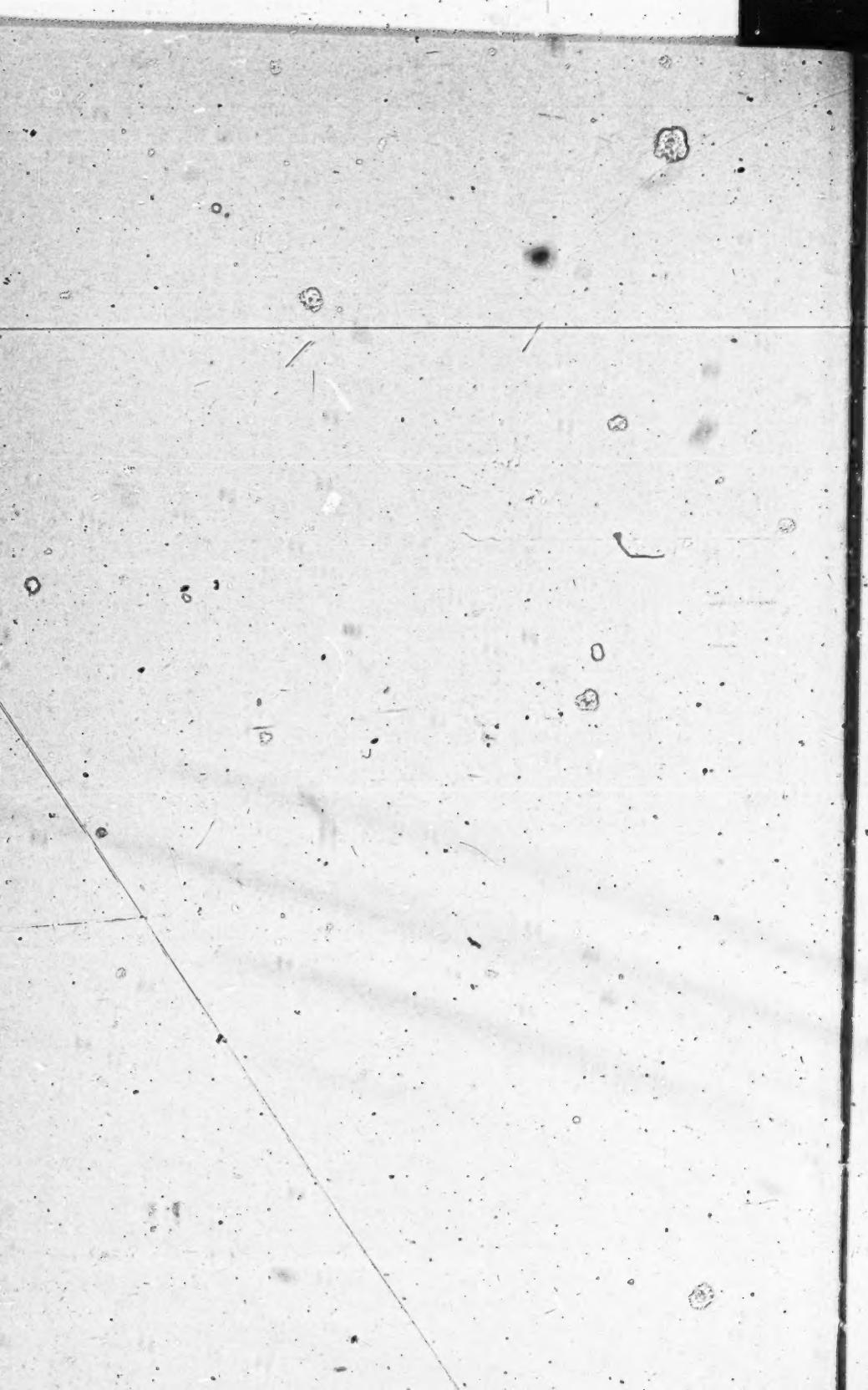
Cases:

<i>Callahan v. United States</i> , 285 U. S. 515	11
<i>Delaney v. United States</i> , 263 U. S. 586	9
<i>United States v. Johnson</i> , 319 U. S. 503	9
<i>United States v. Keegan</i> , (C. C. A. 2), decided February 29, 1944	10
<i>United States v. O'Connell</i> , 126 F. (2d) 807, certiorari denied <i>sub nom. Houlihan v. United States</i> , 316 U. S. 700	10
<i>United States v. Offutt</i> , 127 F. (2d) 336	10
<i>United States v. Winter</i> , 38 F. Supp. 627	10

Statutes:

Selective Training and Service Act of 1940, c. 720, 54 Stat. 885, 894-895, 50 U. S. C. App. § 311, Section 11	2, 9
Section 37 of the Criminal Code	10

(1)



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OPINIONS BELOW

The opinion of the Circuit Court of Appeals for the Third Circuit is not yet reported (R. 146). The opinion of the district court (R. 4) denying petitioners' motion in arrest of judgment or for a new trial is reported at 49 F. Supp. 912.

JURISDICTION

The judgment of the circuit court of appeals was entered November 29, 1943 (R. 147), and a petition for rehearing (R. 148-151) was denied.

January 12, 1944 (R. 152). The petition for a writ of certiorari was filed February 16, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether the evidence is sufficient to support petitioners' conviction for conspiracy to violate Section 11 of the Selective Training and Service Act of 1940.
2. Whether the conspiracy provision of Section 11 of the Selective Training and Service Act of 1940 extends to a conspiracy to evade military service, thus rendering it unnecessary to allege an overt act.

STATUTE INVOLVED

Section 11 of the Selective Training and Service Act of 1940, c. 720, 54 Stat. 885, 894-895, 50 U. S. C. App. § 311, provides in part:

SEC. 11. Any person charged as herein provided with the duty of carrying out any of the provisions of this Act, or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said Act, rules, regulations, or directions who shall

knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate as to the fitness or unfitness or liability or nonliability of himself or any other person for service under the provisions of this Act, or rules, regulations, or directions made pursuant thereto, or who otherwise evades registration or service in the land or naval forces or any of the requirements of this Act, or who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces or any of the requirements of this Act, or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect to perform any duty required of him under or in the execution of this Act, or rules or regulations made pursuant to this Act, or any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto, *or conspire to do so*, shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than \$10,000, or by both such fine and imprisonment, * * *. [Italics added.]

STATEMENT

Petitioners and one Walter Weel were indicted in the United States District Court for the Western District of Pennsylvania in one count charging a conspiracy in violation of Section 11 of the Selective Training and Service Act of 1940 to evade the requirements of that Act and to procure, counsel, assist, aid, and abet petitioner Willard Singer to evade service in the armed forces. The indictment charged that petitioners planned that Willard Singer, a person registered under the Selective Training and Service Act, would, in his questionnaire and at a hearing before his local draft board, make false statements in respect of his own physical condition and the financial responsibility, physical condition, and ability of his father, petitioner Martin Singer, to earn a living; that Martin Singer would submit false affidavits as to his physical condition, financial responsibility, employment, and ability to earn a living in order to aid Willard Singer to evade service in the armed forces; and that Walter Weel would submit a false affidavit in support of a claim for occupational deferment for Willard Singer.¹ A demurrer to the indictment on the ground that it failed to allege overt acts was overruled (R. 8), and petitioners were tried and found guilty (R. 2). A motion for a new trial or in arrest of judgment was overruled (R. 2, 4-6). Petitioner Willard

¹ The indictment is not included in the printed record but is on file in this Court.

Singer was sentenced to imprisonment for one year and one day (R. 2). Imposition of sentence was suspended as to petitioner Martin Singer, and he was placed on probation for two years (R. 2).² On appeal, the judgments were unanimously affirmed (R. 147).

The evidence for the Government may be summarized as follows:

In June 1941, Willard Singer executed and returned to his local draft board his selective service questionnaire (R. 106-107; Ex. 1). As to his own physical defects, he stated that he had "sinus trouble, terrible headaches, feet." He listed his wife as partially dependent upon him and his father and mother as wholly dependent. As the reason for his father's dependency, he wrote, "age and physical condition." He stated that he was an attorney and also secretary and treasurer of Martin's Grill, Inc., that he owed considerable debts, and that in case of forced liquidation the assets of the corporations which he managed would be sacrificed. (Ex. 1.) Attached to the questionnaire was an affidavit of Martin Singer in which he stated that he was wholly dependent upon his son Willard for support; that he was unable to work; that he had eye trouble and terrible headaches; that he had been forced out of

² Walter Weel was also found guilty and sentenced to imprisonment for one year and one day (R. 2). On appeal, his conviction was affirmed (R. 147), but he has not petitioned for certiorari.

business in the depression and that because of his lack of education he could not procure employment (Ex. 2). An affidavit by Martin Singer containing similar statements was submitted to the board about one year later on May 27, 1942 (Ex. 3).

On May 26, 1942, Willard Singer's local draft board classified him in class I-A (R. 12, 28). His request for a hearing was granted, and on June 9, 1942, he appeared and testified before the local board (R. 26-27). He there stated that his father and mother had no income and were not employed (R. 21, 27). On examination by members of the board, he admitted that his father did go to Martin's Grill but said that he did not spend much time there; that he was not on the pay roll and that no Social Security taxes were paid for him (R. 27). The draft board continued Willard Singer's I-A classification and sent the case to the district attorney for further investigation (R. 29-31).

Numerous witnesses testified that they had observed Martin Singer at Martin's Grill, that he waited on trade (R. 35, 36, 38, 39, 54, 56), prepared sandwiches (R. 38, 41, 61), and directed the employees (R. 38-39, 41, 44). Martin Singer customarily ordered liquor for the grill (R. 47-48), employed and discharged help (R. 50, 52), and generally managed the grill (R. 41, 51, 56, 58, 61, 64, 68). At a hearing before the Pennsylvania Liquor Control Board on October 28,

1940, Martin Singer testified that he customarily came to the grill about noon and remained until closing time (Ex. 7, p. 4; see also R. 51, 53-54, 56, 62). At that hearing he stated that he was "in a way" employed at the grill and that he received a salary from Willard (Ex. 7, p. 5). In Willard Singer's application for a marriage license executed May 9, 1940, he gave the occupation of his father as "purchasing agent of restaurant" (R. 16; Ex. 6).

On June 12, 1942, following Willard Singer's hearing before the local board on June 9, there was filed with the board a request for the occupational deferment of Willard Singer executed by the defendant Walter Weel (Ex. 4). Weel's affidavit stated that he was a coal producer, that his war production contracts consisted of orders for coal with specific priority ratings, and that one hundred percent of his production was for defense purposes; that Willard Singer was general manager and an indispensable employee in that Singer was in charge of contracts for leasing of coal lands, stripping equipment, transportation, and all matters pertaining to production and distribution, and that his removal would curtail production and distribution. Weel did own some coal leases but had not yet produced any coal and had no orders of any kind (R. 71-73, 76; see also R. 92-95, 116-118, 127). Both Weel and Singer testified that Weel did not discuss the affidavit with Singer before he filed it but that Weel told

Singer about it afterwards (R. 95-96, 119-120). Weel's stenographer testified that she had filled out the occupational deferment form at Weel's direction in Willard Singer's office one evening in June 1942 (R. 142-143). The affidavit was notarized by an attorney whose office was close to Singer's (R. 112-113).

ARGUMENT

1. Petitioners' attack upon the sufficiency of the evidence to support the conviction (Pet. 11-14) is, we submit, lacking in merit. There can be no question that in their sworn statements submitted to the local board petitioners sought to create the impression that Martin Singer was physically incapable of sustained employment and that he was not working. At the hearing before the board Willard Singer attempted to explain Martin Singer's presence at the grill as an old man's attempt to make himself useful in a general way. The evidence, however, clearly showed that Martin Singer was actually working at the grill and regularly devoting long hours thereto. Under these circumstances, petitioners' argument that they made no misrepresentation as to dependency (Pet. 12; see also Pet. 5-8) is irrelevant. The jury was fully justified in finding, as they did, that petitioners agreed to submit false statements to the local draft board in an attempt to prevent Willard Singer's induction into the armed forces.

Willard Singer's conviction is further supported by the evidence in respect of the Weel affidavit. The circumstances that the affidavit was prepared immediately after Singer's hearing before the local board when it must have been evident to him that the board intended to continue his 1-A classification, that it was prepared in Singer's office on his typewriter, and notarized by a fellow attorney in his building, all tend to show the existence of an agreement between Singer and Weel. In view of the utter falsity of Weel's affidavit and the false statements of Singer in his questionnaire, the jury, which had the additional advantage of seeing the witnesses, was clearly at liberty to disregard their testimony that Singer did not know of the affidavit until after it had been sent to the local board.

We submit that there is no occasion for this Court to depart from the general rule that, where the district court and the circuit court of appeals have found the evidence sufficient, there is no occasion for review by this Court. *United States v. Johnson*, 319 U. S. 503, 518; *Delaney v. United States*, 263 U. S. 586, 589-590.

2. The question whether the conspiracy clause of Section 11 of the Selective Training and Service Act of 1940 (*supra*, pp. 2-3), which does not require allegation or proof of an overt act, extends to all of the offenses defined in that section or relates merely to a conspiracy to hinder or inter-

fere with the administration of the act by force and violence was, as both courts below stated (R. 4, 146), determined in the case of *United States v. O'Connell*, 126 F. (2d) 807 (C. C. A. 2), certiorari denied *sub nom. Houlihan v. United States*, 316 U. S. 700.³ Contrary to petitioners' assertion (Pet. 14-16), no conflict with the *O'Connell* decision and the decision below is presented by the case of *United States v. Offutt*, 127 F. (2d) 336 (App. D. C.), in which the Court of Appeals for the District of Columbia upheld an indictment laid under the general conspiracy statute (Section 37 of the Criminal Code, 18 U. S. C. 88), which charged a conspiracy to violate Section 11 of the Selective Training and Service Act and alleged overt acts. In the *Offutt* case the Court of Appeals for the District of Columbia assumed that Section 88 was the governing statute and therefore that an allegation of an overt act was necessary. The court's attention was not directed to Section 11, and it did not consider the scope of the conspiracy clause of that section. It is unnecessary to determine whether a con-

³ See the Government's brief in opposition in that case, No. 1223, October Term, 1941.

The Second Circuit has recently reaffirmed its decision in the *O'Connell* case. *United States v. Keegan et al.*, decided February 29, 1944, but not yet reported.

⁴ In *United States v. Winter*, 38 F. Supp. 627 (E. D. Pa.), also cited by petitioner as establishing a conflict of decisions (Pet. 16), the applicability of Section 88 was not questioned.

spiracy to violate Section 11 may properly be prosecuted under Section 88, for if only one of the statutes is applicable to such a conspiracy, Section 11, as the later special statute, is controlling (*Callahan v. United States*, 285 U. S. 515, 517-518), and here petitioners were indicted under the later statute.

CONCLUSION

For the reasons stated, we respectfully submit that the petition for a writ of certiorari should be denied.

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Solicitor General.

TOM C. CLARK,

Assistant Attorney General.

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BEATRICE ROSENBERG,

Attorney.

MARCH 1944.

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No. 30

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BRIEF FOR THE UNITED STATES



INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Summary of argument	4
Argument:	5
The indictment is sufficient since Section 11 of the Selective Training and Service Act of 1940 extends to all conspiracies to commit offenses against the Act	0
A. The structure, punctuation, and wording of Section 11 point to the conclusion that the conspiracy clause relates to all of the offenses previously specified in the Section	49
B. The interpretation of Section 11 which follows from its structure, punctuation, and wording is reinforced by its scope and purpose as reflected in its legislative history and its relationship to other statutes	16
Conclusion	34
Appendix	35

CITATIONS

Cases:

<i>Anderson v. United States</i> , 269 Fed. 65, certiorari denied, 255 U. S. 576	19
<i>Ash Sheep Co. v. United States</i> , 252 U. S. 159	12
<i>Callahan v. United States</i> , 285 U. S. 515	20
<i>Commonwealth v. Florence</i> , 192 Ky. 236, 232 S. W. 360	11
<i>Enfield v. United States</i> , 261 Fed. 141	19
<i>Farnsworth v. Zerbst</i> , 97 F. 2d 255, rehearing denied, 98 F. 2d 541	20
<i>Federal Housing Administration v. Burr</i> , 309 U. S. 242	29
<i>First National Bank v. Missouri</i> , 263 U. S. 640	15
<i>Fleischmann Co. v. United States</i> , 270 U. S. 349	25
<i>Frohwerk v. United States</i> , 249 U. S. 204	20
<i>Great Western Ry. Co. v. Swindon, etc., Ry. Co.</i> , L. R. 9 App. Cas. 787	10
<i>Gustavel v. State</i> , 153 Ind. 613, 54 N. E. 123	10, 11
<i>Haywood v. United States</i> , 268 Fed. 795, certiorari denied, 256 U. S. 689	19
<i>Helvring v. Morgan's, Inc.</i> , 293 U. S. 121	28
<i>Hillesboro Coal Co. v. Knotts</i> , 273 Fed. 221	7, 10, 13

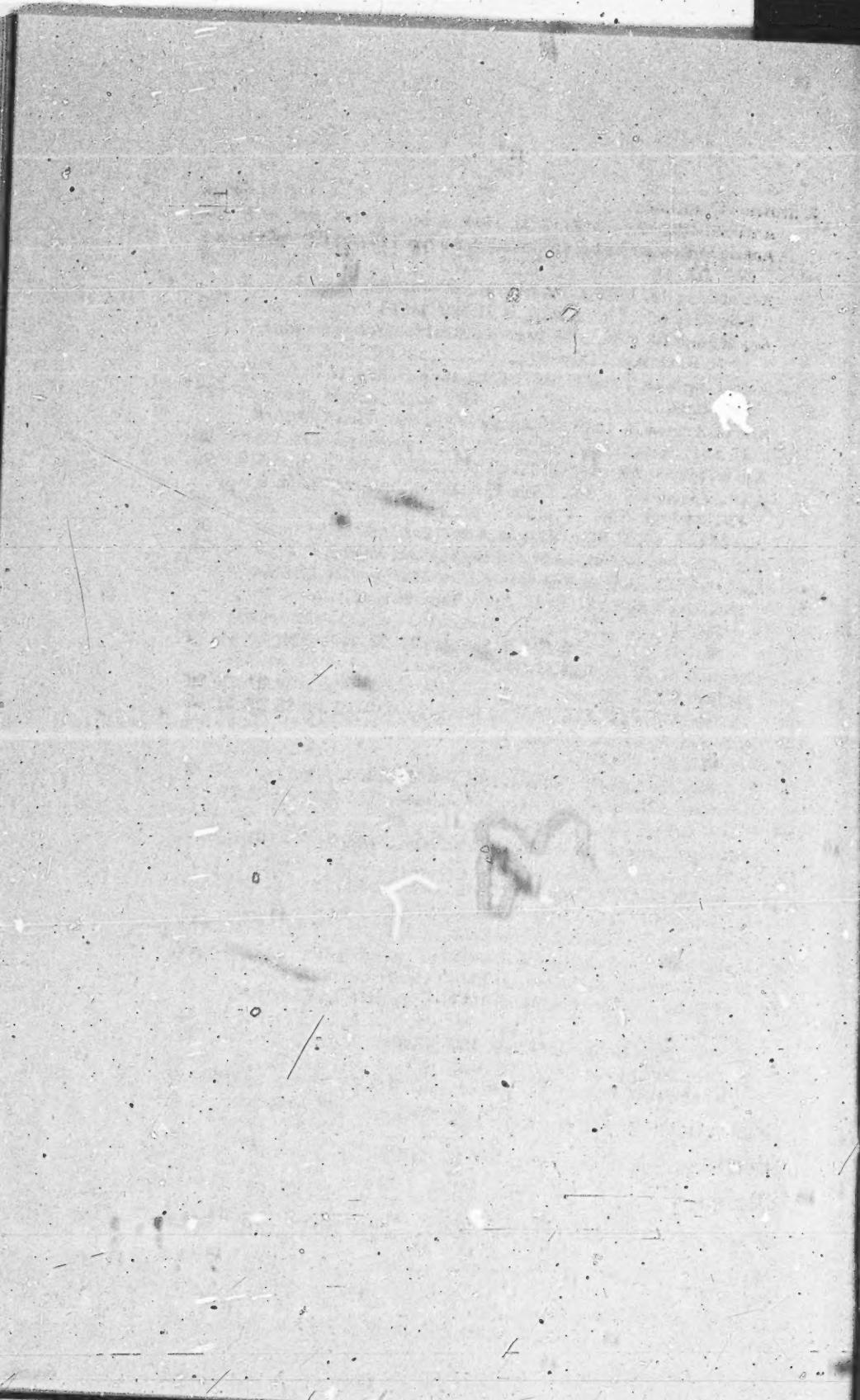
Cases—Continued.

	Page
<i>United States v. Keegan</i> , 141 F. 2d 246, No. 39, this Term.	16
<i>Keifer & Keifer v. Reconstruction Finance Corp.</i> , 303 U. S.	
381	29
<i>Kennedy v. Gibson</i> , 8 Wall. 408.	10
<i>Nash v. United States</i> , 229 U. S. 373.	32
<i>Norrie v. State Tax Commission</i> , 98 Utah 170, 97 P. 2d 937,	
126 A. L. R. 1318.	10
<i>O'Connell v. United States</i> , 253 U. S. 142.	19, 20
<i>Ozawa v. United States</i> , 260 U. S. 178.	25
<i>Pierce v. United States</i> , 252 U. S. 239.	20
<i>Porto Rico Ry. Co. v. Mor</i> , 253 U. S. 345.	7, 10, 14
<i>Reeder v. United States</i> , 262 Fed. 36, certiorari denied, 252	
U. S. 581.	19, 20
<i>Rust v. Griggs</i> , 172 Tenn. 565, 113 S. W. 2d 733.	15
<i>Service Investment Co. v. Dorst</i> , 232 Wm. 574, 288 N. W. 160.	10, 15
<i>Smithkin v. United States</i> , 265 Fed. 489.	19
<i>United States v. American Trucking Ass'ns</i> , 310 U. S. 534.	11, 25, 29
<i>United States v. Bobbit</i> , 66 U. S. 55.	28
<i>United States v. Giles</i> , 300 U. S. 41.	12
<i>United States v. Hutcheson</i> , 312 U. S. 219.	26
<i>United States v. McHugh</i> , 253 Fed. 224.	19
<i>United States v. O'Connell</i> , 126 F. 2d 807, certiorari denied	
sub nom. <i>Houlihan v. United States</i> , 316 U. S. 700.	7, 16
<i>United States v. Offutt</i> , 127 F. 2d 336.	20
<i>United States v. Standard Brewery</i> , 251 U. S. 210.	10
<i>United States v. Sweet</i> , 245 U. S. 563.	29
<i>United States v. Wi</i> ., 38 F. Supp. 627.	20
Statutes:	
Act of July 2, 1890, c. 647, Secs. 1-3, 26 Stat. 209, 15 U. S.	
C. Secs. 1-3.	29
Act of Aug. 27, 1894, c. 349, Sec. 73, 28 Stat. 570, as	
amended, 15 U. S. C. Sec. 8.	29
Act of March 4, 1909, c. 321, 35 Stat. 1092:	
Sec. 19 (18 U. S. C. Sec. 51)	30
Sec. 21 (18 U. S. C. Sec. 54)	31
Sec. 136 (18 U. S. C. Sec. 242)	31
Sec. 296 (18 U. S. C. Sec. 487)	31
Act of March 4, 1909, c. 321, Sec. 35, as amended, Oct.	
23, 1918, c. 194, 40 Stat. 1015, 18 U. S. C. Sec. 83.	30
Selective Draft Act of May 18, 1917, 40 Stat. 76, as amended	
(50 U. S. C. App., Secs. 201-214):	
Sec. 5.	18, 35
Sec. 6.	18, 35
Sec. 12.	18
Sec. 13.	18
Espionage Act of June 15, 1917, c. 30, 40 Stat. 217, 219,	
41 Stat. 1359 (50 U. S. C. Secs. 33, 34):	
Sec. 3.	20, 21, 36
Sec. 4.	20, 11, 36
Espionage Act of June 15, 1917, c. 30 tit. viii, Sec. 5, 40	
Stat. 226 (22 U. S. C. Sec. 234)	31

III

Statutes—Continued.

	Page
Anti-Sabotage Act of April 20, 1918, c. 59, 40 Stat. 533	26
Act of March 20, 1933, c. 3, Sec. 15, 48 Stat. 11, 38 U. S. C. Sec. 715.	29
Act of May 18, 1933, c. 32, Sec. 21, 48 Stat. 68, 16 U. S. C., Sec. 831t (e)	30
Act of June 16, 1933, c. 98, Sec. 64, 48 Stat. 269, as amended, 12 U. S. C. Sec. 1138d (f)	30
Act of June 18, 1934, c. 560, Sec. 2, 48 Stat. 979, 18 U. S. C. Sec. 420a.	31
Act of August 3, 1939, c. 413, Sec. 5, 53 Stat. 1179, 18 U. S. C. Sec. 418a.	30
Act of March 28, 1940, c. 72, 54 Stat. 79	26
Alien Registration Act, Title I, enacted June 28, 1940, c. 439, 54 Stat. 670	27
Act of Oct. 17, 1940, c. 897, 54 Stat. 1201	27
Act of November 30, 1940, c. 926, 54 Stat. 1220	26
Selective Training and Service Act of 1940, c. 720, 54 Stat. 885, 894-895, 50 U. S. C. App., Secs. 301, 311:	
Sec. 1	25
Sec. 11.....2, 5, 6, 7, 8, 9, 17, 21, 22, 24, 25, 26, 29, 30, 32	
Criminal Code (18 U. S. C. Secs. 6, 88):	
Sec. 6.....19, 21, 22, 36	
Sec. 37.....4, 8, 19, 21, 23, 25, 31, 32	
R. S. Sec. 1, 1 U. S. C. Sec. 1.....15	
Miscellaneous:	
86 Cong. Rec. 9824, 10077-12290, 10095, 11266.....17, 18	
Hearings, House Committee on Military Affairs, H. R. 10132, 76th Cong., 3d Sess., p. 3.....17	
Hearings, Senate Committee on Military Affairs, S. 4164, 76th Cong., 3d Sess., pp. 3-4.....17	
H. R. 10132, 76th Cong. (86 Cong. Rec. 8908).....17	
H. Rep. 2003, 76th Cong., 3d Sess., p. 7.....18	
President's Proclamation No. 2352.....24	
President's Proclamation No. 2487.....24	
Selective Service, in Peacetime, First Report of the Director of Selective Service, 1940-1941, Appendix 1, pp. 319- 322.....18	
S. 4164, 76th Cong. (86 Cong. Rec. 8680).....17	
S. Rep. 2002, 76th Cong., 3d Sess., pp. 4-5.....18	



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The opinion of the Circuit Court of Appeals (R. 146) is reported at 141 F. 2d 262. The opinion of the district court (R. 4) denying petitioners' motions in arrest of judgment and for a new trial is reported at 49 F. Supp. 912.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered November 29, 1943 (R. 147), and a petition for rehearing (R. 148-151) was denied January 12, 1944 (R. 152). The petition for a writ of certiorari was filed February 16, 1944,

and denied March 27, 1944. On May 22, 1944, this Court vacated its order of March 27th and granted the petition as to the second question presented (Pet. 2-3), whether the conspiracy provision of Section 11 of the Selective Training and Service Act extends to a conspiracy to accomplish evasion of military service or is limited to conspiracies knowingly to hinder or interfere by force or violence with the administration of the Act. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTION PRESENTED

Whether a conspiracy to accomplish the evasion of military service by one subject to the Selective Training and Service Act is punishable under Section 11 of the Act, with the consequence that an indictment for the offense need not allege an overt act, since Section 11 requires none.

STATUTES INVOLVED

Section 11 of the Selective Training and Service Act of 1940, c. 720, 54 Stat. 885, 894-895, 50 U. S. C. App., Sec. 311, provides in pertinent part as follows:

Any person charged as herein provided with the duty of carrying out any of the provisions of this Act, or the rules or regulations, made or directions given there-

under, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said Act, rules, regulations, or directions who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate as to the fitness or unfitness or liability or nonliability of himself or any other person for service under the provisions of this Act, or rules, regulations, or directions made pursuant thereto, or who otherwise evades registration or service in the land or naval forces or any of the requirements of this Act, or who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces or any of the requirements of this Act, or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect to perform any duty required of him under or in the execution of this Act, or rules or regulations made pursuant to this Act, or any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto, or conspire to do so, shall, upon conviction in the district court of the United States having jurisdic-

tion thereof, be punished by imprisonment for not more than five years or a fine of not more than \$10,000, or by both such fine imprisonment, * * * *.

Section 37 of the Criminal Code (18 U. S. C. 88) provides as follows:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both.

Other statutes, which will be referred to in the Argument, are set forth in the Appendix, *infra*.

STATEMENT

Petitioners and one Walter Weel were indicted in the United States District Court for the Western District of Pennsylvania on November 12, 1942, in one count charging a conspiracy in violation of Section 11 of the Selective Training and Service Act of 1940, to accomplish the evasion of service in the armed forces by petitioner Willard Singer. The indictment charged that the defendants planned that Willard Singer, who had registered under the Selective Training and Service Act, would, in his questionnaire and at a hearing before his local draft board, make false statements in respect to his own physical condition and the financial responsibility, ability to earn a living,

and physical condition of his father, Martin Singer; that Martin Singer would submit false affidavits as to his physical condition, financial responsibility, employment, and ability to earn a living, in order to aid Willard Singer to evade service in the armed forces; and that Walter Weel would submit a false affidavit as an employer, in support of a claim for the occupational deferment of Willard Singer.¹ A demurrer to the indictment on the ground that it was insufficient because it failed to allege an overt act was overruled (R. 8) and petitioners were tried before a jury and found guilty on December 9, 1942 (R. 2). Motions for a new trial and in arrest of judgment were overruled (R. 2, 4-7). Petitioner Willard Singer was sentenced to imprisonment for one year and one day (R. 2). Weel received a similar sentence (R. 2). Imposition of sentence was suspended as to petitioner Martin Singer and he was placed on probation for two years (R. 2). On appeal, the judgments were affirmed (R. 147).

SUMMARY OF ARGUMENT

The question is whether the indictment is sufficient, in light of the fact that it does not charge the commission of an overt act. It is sufficient if Section 11 of the Selective Training and Service Act extends to all conspiracies to commit offenses

¹ The indictment is not included in the printed record but is on file in this Court.

against the Act, since that Section does not require an overt act for completion of the offense of conspiracy; but the indictment is insufficient if the conspiracy clause of Section 11 is limited to conspiracies to interfere with the administration of the Act by ~~force~~ or violence, since petitioners and their associate are not charged with having contemplated force or violence and Section 37 of the Criminal Code, under which it would have been necessary to prosecute them if Section 11 of the Selective Training and Service Act does not apply, requires the commission of an overt act.

Section 11 presents a question of interpretation because the conspiracy clause, following the conjunction "or", does not include an expressed subject. The antecedent of "so" is not specified; and the implied subject, from the wording of the Section and the position of the conspiracy clause in it, might be either that of the immediately preceding clause or those of all of the antecedent clauses. The clause, however, is separated by a comma from the one before and thus becomes the last of a series. Principles of statutory construction point to the correct interpretation.

Application of the principle that "when several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all", and of the rule that words which were omitted from a

statute in derogation of its meaning may be regarded as present by a court which construes the statute, leads to the conclusion that the conspiracy clause of Section 11 relates back to all of the preceding clauses which define substantive offenses. Accordingly, that clause is applicable to the offense committed by petitioners and their associate. Other instances of statutory interpretation in which the same principles have been applied, notably *Porto Rico Ry. Co. v. Mor*, 253 U. S. 345, and *Hillsboro Coal Co. v. Knotts*, 273 Fed. 221 (S. D. Ill.), exemplify the method of interpretation which should be applied here. Both the Circuit Court of Appeals for the Second Circuit in *United States v. O'Connell*, 126 F. 2d 807, certiorari denied *sub nom. Houlihan v. United States*, 316 U. S. 700, and the court below in the present case have adopted this reasoning.

The legislative purpose which should be given effect in interpreting the conspiracy clause of Section 11 of the Selective Training and Service Act clearly was (1) to increase the maximum punishment for all conspiracies to violate the Act, as an accompaniment of increased punishment for the substantive offenses defined, above that prescribed in the Selective Draft Act of 1917, and (2) to eliminate the requirement of an overt act. This is demonstrated by the facts (a) that a contrary interpretation would leave the conspiracy clause substantially without legisla-

tive effect, (b) that the Selective Training and Service Act was enacted as part of a legislative program for dealing with the national emergency of 1940, which embraced several enactments increasing the punishments for related offenses, (c) that the punishments prescribed in recent legislation defining other specific types of conspiracy are equally as severe as those provided in Section 11 and are equal to those for the corresponding substantive offenses, and (d) the omission of the requirement of an overt act for completion of the offense of conspiracy is usual in modern Congressional legislation.

It would run counter to all of the foregoing considerations to limit the conspiracy clause of Section 11 of the Selective Training and Service Act to conspiracies to obstruct the administration of the act by force or violence. Non-violent conspiracies to commit other substantive offenses against the Act would be punishable only under the comparatively mild provision of Section 37 of the Criminal Code, contrary to the clearly manifested purpose of Congress. The Selective Training and Service Act would be construed "in a spirit of mutilating narrowness" instead of in accordance with the legislative purpose. The latter represents the method of this Court in giving effect to Congressional enactments.

ARGUMENT**THE INDICTMENT IS SUFFICIENT SINCE SECTION 11 OF THE SELECTIVE TRAINING AND SERVICE ACT OF 1940 EXTENDS TO ALL CONSPIRACIES TO COMMIT OFFENSES AGAINST THE ACT**

A. The structure, punctuation, and wording of section 11 point to the conclusion that the conspiracy clause relates to all of the offenses previously specified in the section

Section 11 provides that "any person" who commits any of six enumerated offenses against the Act and the regulations issued pursuant to it, none of which involves the use of force or violence, "or any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration of the Act or the rules or regulations made pursuant thereto, or conspire to do so," shall be punished in the manner prescribed.

A question of interpretation is presented by the quoted provision of the Section because the clause "conspire to do so", following the conjunction "or", may refer to all of the offenses previously defined in the Section or may refer only to the immediately preceding offense, defined as "knowingly [to] interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto". If the clause included, as do all of the previous clauses of the Section, a subject, "any person who" or "any person or persons who", such

as must in any event be implied, it would be clear that the conspiracy clause, as the last independent clause in a series, extended to conspiracies to commit any of the offenses previously enumerated. Even as the matter stands, however, the clause is separated by a comma from the one before and is one of the series; and the omission of an expressed subject renders only colorable the claim that it relates simply to the last preceding clause. Principles of statutory construction point to the correct interpretation.

It is an established rule that "when several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all." *Porto Rico Ry. Co. v. Mor*, 253 U. S. 345, 348; *United States v. Standard Brewery*, 251 U. S. 210, 218; *Hillsboro Coal Co. v. Knotts*, 273 Fed. 221 (S. D. Ill.); Lord Bramwell in *Great Western Ry. Co. v. Swindon, etc., Ry. Co.*, L. R. 9 App. Cas. 787; *Service Investment Co. v. Dorst*, 232 Wis. 574, 288 N. W. 169 (1939). It is also settled that words which were omitted from a statute by the legislature may be regarded as present by a court which has the statute to construe, in order to avoid defeating the legislative purpose. *Kennedy v. Gibson*, 8 Wall. 498, 506-507; *Gustavel v. State*, 153 Ind. 613, 54 N. E. 123 (1899); *Norville v. State Tax Commission*, 98 Utah 170, 97 P. 2d 937, 126 A. L. R. 1318 (1940);

Commonwealth v. Florence, 192 Ky. 236, 232 S. W. 369 (1921). This is so even when the result is to sustain a criminal conviction which otherwise could not stand. Thus the court stated in *Gustavel v. State, supra*, at p. 617, in justification of regarding the omitted adjective "other" as included in a statutory provision which would otherwise have been nullified, that "the intent of the act is evident and it should be carried into effect. Criminal statutes should not be construed so strictly as to defeat their obvious interpretations. The principle of strict construction does not allow a court to make that an offense which is not such by legislative enactment, but this does not exclude the application of common sense to the terms made use of in an act, in order to avoid an absurdity which the legislature ought not to be presumed to have intended." See also *Commonwealth v. Florence, supra*.

This Court has said, moreover, that even when the literal wording of a statutory provision does "not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole'", its interpretation should follow "that" purpose, rather than the literal words." *United States v. American Trucking Assn's*, 310 U. S. 534, 543. The same principle has been followed in criminal cases, with the result that convictions have been sustained even though stricter interpretations, leading to reversals, would have been in accord with

the statutory wording. *United States v. Giles*, 300 U. S. 41, 49; cf. *Ash Sheep Co. v. United States*, 252 U. S. 159, 170.

Under the foregoing principles, especially in view of the comma which separates the clause "or conspire to do so" from the clause immediately preceding it, the proper conclusion is that the conspiracy provision of Section 11 relates back to all of the offenses previously enumerated. The omitted subject, which would have made clear the relationship of the clause to the remainder of the series and which must be inferred in any event, may be supplied; and the predicate "conspire to do so" may be given its natural significance of reference back to all of the offenses previously enumerated.

The structure of the Section as a whole reinforces this view. The substantive offenses denounced are set forth first and are then followed by the conspiracy clause. Each of the offenses has been placed on the same footing and each is punishable in the same manner. The conspiracy clause appears at the end of a series of enumerated offenses and is separated from the preceding clause by a comma, thus emphasizing its relationship to all the others. No reason appears, of wording or policy, for denying to it the meaning which the legislature seems clearly to have intended. The result is to create a rational scheme of offenses and punishments, with the same maxi-

mum punishment throughout, treating all types of conspiracies equally, just as the substantive offenses are treated.

A similar method of interpretation was applied to a criminal statute in *Hillsboro Coal Co. v. Knotts*, 273 Fed. 221 (S. D. Ill.), in which a suit was brought to enjoin the prosecution of the plaintiffs upon a charge of violating Section 9 of the Lever Act of August 10, 1917, c. 53, 40 Stat. 276, which made it an offense for any person to conspire or combine with another "(a) to limit the facilities for transporting, producing * * * or dealing in any necessaries; (b) to restrict the supply of any necessaries; (c) to restrict the distribution of any necessaries; (d) to prevent, limit, or lessen the manufacture or production of any necessaries in order to enhance the price thereof."

It was contended that the qualifying phrase "in order to enhance the price thereof" applied only to subsection (d) in which it appeared, and that the preceding subsections were therefore so broad in scope and so vague in content as to violate the requirements of due process of law. The court, however, held that the phrase in question, although contained in the concluding subsection, was intended to apply to all of the preceding subsections and that this became clear if a comma were inserted before the phrase as the legislature must have intended. In the instant case the statute as enacted contains the comma which sets off the

clause "or conspire to do so" from the remainder of the provision within which it appears.

In *Porto Rico Ry. Co. v. Mor*, 253 U. S. 345 *supra*, the following provision of the Jones Act of March 2, 1917, c. 145, 39 Stat. 951, providing a civil government for Porto Rico, was involved:

Said district court shall have jurisdiction of all controversies where all of the parties on either side of the controversy are citizens or subjects of a foreign State or States, or citizens of a State, Territory, or District of the United States not domiciled in Porto Rico, wherein the matter in dispute exceeds * * * the sum or value of \$3,000 * * *

The question was whether the qualifying phrase "not domiciled in Porto Rico" modified only the phrase "citizens of a State, Territory, or District of the United States," to which it was directly attached in the sentence, or whether it also modified the preceding words "citizens or subjects of a foreign State or States." This Court held that the latter was the proper interpretation, giving effect to the legislative purpose, and that, consequently, citizens or subjects of a foreign state or states who were domiciled in Porto Rico could not bring suit in the District Court by virtue of the quoted provision. In that case again, in contrast to the case at bar, the judicial interpretation of the statutory provision was not aided by the presence

of a comma before the modifying words which were related back. The presence of the comma before the clause involved in the instant case points even more definitely to a similar conclusion. See *Service Investment Co. v. Dorst, supra*; *Rust v. Griggs*, 172 Tenn. 565, 573, 113 S. W. 2d 733 (1938).

The use of the plural verb "conspire" in the clause in question does not militate against this result. If interpreted to cover conspiracies to commit any of the offenses previously enumerated in the Section, the clause refers both to the offenses which "any person" is to be punished for committing and to the offense of interfering by force or violence with the administration of the Act, which the Section makes punishable when committed by "any person or persons." Hence the subject of the verb "conspire" is both singular and plural, whether or not the clause relates back to the beginning of the Section, and the use of the plural verb is natural and correct. It includes the singular. *First National Bank v. Missouri*, 263 U. S. 640, 657; R. S. Sec. 1, 1 U. S. C. Sec. 1. Conspiracy, moreover, is inherently a crime which requires more than one participant, and the choice of the plural verb was inevitable for this reason as well.

The foregoing reasoning with respect to the meaning of Section 11 has been followed by the Circuit Court of Appeals for the Second Circuit,

the only other court which has dealt with the problem, and has been followed, in turn, by both of the lower courts in the present case (R. 4, 146). In *United States v. O'Connell*, 126 F. 2d 807, certiorari denied *sub nom. Houlihan v. United States*, 316 U. S. 700; the Circuit Court of Appeals for the Second Circuit noted that (p. 810):

* * * the words "or conspire to do" would not have been preceded by a comma (as they are) if they had been intended to relate only to hindering the administration of the Act "by force or violence" and not to the other enumerated offenses. * * *

and, further, that—

Interpreting the section as a whole, the subjects of the verb "conspire" are various, some in the singular and some in the plural, so that the word "conspire" was naturally enough placed in the plural.

See also *United States v. Keegan et al*, 141 F. 2d 248 (C. C. A. 2; No. 39, this Term).

B. *The interpretation of section 11 which follows from its structure, punctuation, and wording is reinforced by its scope and purpose as reflected in its legislative history and its relationship to other statutes*

Although the legislative history of the Selective Training and Service Act of 1940 contains no specific statement with regard to the proper interpre-

tation of Section 11,² it was stated that the section was intended in a general way to reproduce in simpler form the penal provisions which prevailed under the legislation of World War I. Senator Sheppard, Chairman of the Senate Committee on Military Affairs, in explaining the bill stated on the floor of the Senate (86 Cong. Rec. 10095) that "Section 9 [Section 11 as enacted] contains the penalty provisions of the bill, which are substantially the same as the World War [Selective Draft] act [40 Stat. 76, 50 U. S. C., App., Sec. 201 *et seq.*]. Experience with the World War provisions shows that they worked satisfactorily in providing the necessary protection."

² The bills which eventually became the Selective Training and Service Act of 1940 were introduced in the House (H. R. 10132) by Representative Wadsworth on June 21, 1940 (86 Cong. Rec. 8908) and in the Senate (S. 4164) by Senator Burke on June 20, 1940 (86 Cong. Rec. 8680). Immediately upon their introduction they were referred to the respective Committees on Military Affairs. As originally framed, the penal provisions in each bill were contained in a single section substantially the same as Section 11 as it now stands. They then included in their present position, in Section 10 of the House Bill and Section 9 of the Senate Bill, the words "or any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto, or conspire to do so." Extensive hearings were conducted by the committees, but there is little discussion of the penal aspects of the bills. Hearings, House Committee on Military Affairs, H. R. 10132, 76th Cong., 3d Sess., p. 3; Hearings, Senate Committee on Military Affairs, S. 4164, 76th Cong., 3d Sess., pp. 3-4. An abstract of the leg-

The penal provisions of the Selective Draft Act of 1917 did not, however, contain a conspiracy provision and the punishments which it prescribed for substantive offenses were much milder than those proposed in the bill. The 1917 Act punished failure to register (Section 5); failure to file a questionnaire, the making of false exemption claims, failure to report for examination, and otherwise evading the requirements of the Act or aiding another to do so (Section 6); and other offenses not here relevant (Sections 12 and 13), by imprisonment of not more than one year. Sena-

islative history of the Act is set forth in *Selective Service in Peacetime*, First Report of the Director of Selective Service, 1940-1941, Appendix 1, pp. 319-322. The committee reports recommending the enactment of the Selective Service Act are not illuminating, the House Report merely stating that "Section 10 [Section 11 as enacted] is the general penalty section. The violations specified are punishable by imprisonment for not more than 5 years or by a fine of not more than \$10,000, or by both such fine and imprisonment" H. Rep. 2903, 76th Cong., 3d Sess., p. 7. The bills were reported out of committee and brought on to the floor of the House on August 29, 1940 (86 Cong. Rec. 11266) and on to the floor of the Senate on August 5, 1940 (86 Cong. Rec. 9824). Lengthy debates followed, culminating in the passage of the law on September 16, 1940 (86 Cong. Rec. 10077-12290). The "force or violence" provision of Section 11 as enacted departed from the original bills through the insertion of the word "knowingly" before the words "hinder or interfere" and the expansion of the original word "regulations" to "rules or regulations." These changes were made in committee (S. Rep. 2002, 76th Cong., 3d Sess., pp. 4-5).

tor Shephard's statement, consequently, must be taken to mean that Section 9 of the bill embraced the offenses covered in the 1917 Act and also the conspiracy provisions of other statutes which were employed in enforcing that Act, without reference to the punishments prescribed.

Conspiracy prosecutions were liberally employed during World War I. Conspiracies to commit the non-violent offenses defined in the Selective Draft Act were prosecuted under Section 37 of the Criminal Code, *supra*, p. 4. For examples, see *O'Connell v. United States*, 253 U. S. 142, 148; *Anderson v. United States*, 269 Fed. 65 (C. C. A. 9), certiorari denied, 255 U. S. 576; *United States v. McHugh*, 253 Fed. 224 (W. D. Wash.). Conspiracies contemplating the use of force were prosecuted under Section 6 of the Criminal Code, *infra*, p. 37. *Reeder v. United States*, 262 Fed. 36 (C. C. A. 8), certiorari denied, 252 U. S. 581; *Enfield v. United States*, 261 Fed. 141 (C. C. A. 8).³ Some conspir-

³ Compare *Haywood v. United States*, 268 Fed. 795 (C. C. A. 7), certiorari denied, 256 U. S. 689, holding that a conspiracy to obstruct by force the operation of the 1917 Act could not be prosecuted under Section 6, but must be prosecuted under Section 4 of the Espionage Act on the theory that in time of war the Espionage Act superseded Section 6. *Contra* as to Section 37 of the Criminal Code: *Smitkin v. United States*, 265 Fed. 489 (C. C. A. 7). *Enfield v. United States*, which is *contra* as to Section 6 of the Criminal Code, conceded that the language of Section 4 of the Espionage Act precluded prosecution under Section

acies, constituting conspiracies to violate Section 3 of the Espionage Act by obstructing "the recruiting or enlistment service of the United States, to the injury of the service of the United States", were prosecuted under Section 4 of that Act, 40 Stat. 219, 50 U. S. C. sec. 34, *infra*, pp. 36-37. See *O'Connell v. United States*, *supra*; *Pierce v. United States*, 252 U. S. 239; *Frokwerk v. United States*, 249 U. S. 204; *Reeder v. United States*, *supra*. That section, however, is applicable only in time of war because the substantive offense, as defined in Section 3, can be committed only during war.

37 of the Criminal Code of any conspiracies which were subject to prosecution under Section 4 of the Espionage Act. However, it was usual to frame indictments in several counts under the various statutes, with factual variations. *O'Connell v. United States*, 253 U. S. 142, *supra*.

It is unnecessary to decide in the present case whether conspiracies to violate the Selective Training and Service Act of 1940 may properly be prosecuted under Section 37 of the Criminal Code, as was assumed in *United States v. Offutt*, 127 F. (2d) 336 (App. D. C.) and *United States v. Winter*, 38 F. Supp. 627 (E. D. Pa.). If only one of the existing conspiracy statutes can be invoked, clearly it is Section 11 of the Selective Training and Service Act of 1940, under which petitioner was convicted, since it is the latest enactment in point of time and is specifically applicable, provided, of course, that this section extends, as here contended, to conspiracies not contemplating force or violence. *Callahan v. United States*, 285 U. S. 515, 517-518; *Farnsworth v. Zerbst*, 97 F. 2d 255 (C. C. A. 5), rehearing denied, 98 F. 2d 541.

Section 37 of the Criminal Code provides punishment of not more than two years' imprisonment or a fine of \$10,000 or both; Section 6 of the Criminal Code prescribes a maximum penalty of six years' imprisonment or a fine of \$5,000 or both; and Section 4 of the Espionage Act, which is applicable only in time of war, incorporates the provisions of Section 3 for maximum sentences of 20 years' imprisonment. None of this legislation had been repealed at the time the Selective Training and Service Act of 1940 was under consideration. The purpose of including a conspiracy clause in Section 11, therefore, must have been to furnish a single basis for prosecuting conspiracies to violate the Act, with a maximum punishment deemed appropriate, rather than to deal particularly with conspiracies to interfere with the administration of the Act by force or violence.

That it was the purpose of Congress to include in Section 11 of the Selective Training and Service Act all conspiracies to violate the Act, whether or not force or violence is contemplated, is indicated by the following considerations: (a) the contrary interpretation leaves the conspiracy clause substantially without legislative effect; (b) the inclusion of all conspiracies to violate the Act, by rendering applicable the increased maximum punishment of five years to those conspiracies in which force or violence is not contemplated, accords with Congressional policy during the national emergency; (c) this increased max-

imum punishment conforms to the pattern of punishments for other non-violent conspiracies denounced in recent legislation, both as respects the amount of possible punishment and as regards the equality of such punishment with that which is prescribed for corresponding substantive offenses; and (d) the omission of an overt act as an ingredient of the offense of conspiracy likewise accords with modern Congressional policy.

(A) As regards the first consideration, it is evident that the conspiracy clause of Section 11, if that clause were deemed to apply only to conspiracies to obstruct the Act by force or violence, would either have no effect whatever upon the pre-existing law or—upon the doubtful assumption that Section 11 of the Selective Service Act superseded Section 6 of the Criminal Code with respect to the offense specified—would operate solely to decrease the maximum imprisonment for the offense from the six years prescribed in the latter section (*infra*, p. 37) to five years. Section 6 of the Criminal Code, like Section 11 of the Selective Training and Service Act, contains no requirement of an overt act; and accordingly the latter section works no change in this respect as applied to conspiracies to use force.

As will be shown, a decrease in the punishment for an offense connected with the national emergency would have been contrary to the policy of Congress as evidenced in other statutes enacted

during the same period. An interpretation which works such a result would be inconsistent with the probable legislative intent. In any event, both the insignificance of this change and the total absence of legislative effect if Section 6 of the Criminal Code be deemed not to have been superseded, constitute a degree of futility not lightly to be imputed to a significant clause in emergency legislation of the highest importance.

By contrast, the interpretation of the conspiracy clause which causes it to include all conspiracies to violate the Act, recognizes as resultant changes in the law, (a) an increase in the maximum punishment for conspiracies not contemplating force or violence from two years' imprisonment or a \$10,000 fine or both, as specified in Section 37 of the Criminal Code, to 5 years' imprisonment or a \$10,000 fine or both, and (b) abolition of the requirement that an overt act be established to complete the offense. Both changes, as will be shown, are in accord with Congressional policy at the time of enactment of the Selective Training and Service Act; and they are substantial and significant. The purpose of Congress to accomplish them seems clear, especially since nowhere in the proceedings leading to the enactment of the Selective Training and Service Act is there any indication of especial concern over possible interference with administration by force or violence. In addition, the conspiracy clause, as

thus construed, carries out fully the purpose stated by Senator Sheppard of bringing together the penal provisions applicable to selective service violations. Given the more narrow construction, the section leaves necessary continued resort to Section 37 of the Criminal Code in the prosecution of non-violent conspiracies.

(B) Quite evidently, in prescribing the punishments specified in Section 11 of the Selective Training and Service Act of 1940, Congress was giving effect to a policy of increasing these punishments beyond those which, except as the Espionage Act might be invoked, were effective with respect to offenses against the administration of the Draft Act during World War I. This policy was fitting, since at the time of the passage of the Selective Service Act on September 16, 1940, the country was not at war and the pertinent provisions of the Espionage Act were not operative. The comparatively mild provisions of Section 37 of the Criminal Code consequently supplied the only existing sanctions that might have been invoked against non-violent conspiracies to interfere with the administration of the Act. The relevant Espionage Act provisions remained inoperative during the limited national emergency declared by the President on September 8, 1939 (Proc. No. 2352) and the unlimited emergency declared on May 27, 1941 (Proc. No. 2487).

Both the substance and the express words of the Selective Training and Service Act demonstrate that it was formulated to meet the situation created by military peril in the absence of formally declared war; and this is a fact of history well known to the Court. In the first section of the Act Congress declared that "it is imperative to increase and train the personnel of the armed forces of the United States." The increased punishments prescribed in Section 11 for specific offenses, as compared with those prevailing during World War I, respond to the requirements of the emergency thus alluded to, as envisaged by Congress. A similar increase in the maximum punishment for conspiracies to commit non-violent offenses against the Act, as compared with those prescribed in Section 37 of the Criminal Code, was equally called for. Section 11 was designed to accomplish both purposes and should not now be partially defeated by a restrictive interpretation of its conspiracy clause for which there is no necessity because of wording or punctuation. On the contrary, the canon of interpretation which requires that ambiguities in statutes be so resolved as to give effect to the legislative purpose is fully applicable. *United States v. American Trucking Ass'ns*, 310 U. S. 534, 542-544; *Fleischmann Co. v. United States*, 270 U. S. 349, 361; *Ozawa v. United States*, 260 U. S. 178, 194. The Selective Training and Service Act is clearly a type of

legislation which "must not be read in a spirit of mutilating narrowness". *United States v. Hutcheson*, 312 U. S. 219, 235.

The true legislative purpose with respect to the punishments prescribed in Section 11 of the Act emerges still more clearly when these are viewed in the setting of other legislation, punishing crimes related to the national defense, which was enacted at the same session of Congress. First in point of time was the Act of March 28, 1940, c. 72, 54 Stat. 79, amending the Espionage Act of 1917 by systematically increasing the maximum punishment for those offenses, defined in the original Act, which may be committed in time of peace. Previous maximum-sentence provisions which authorized two years' imprisonment were amended to authorize five- or ten-year sentences; previous five-year provisions were raised to ten years; and a ten-year maximum for interference with exportations through the use of fire or explosives was increased to twenty years. Related in purpose to these amendments to the Espionage Act were those of November 30, 1940, c. 926, 54 Stat. 1220, to the Anti-Sabotage Act of April 20, 1918, c. 59, 40 Stat. 533, whereby destruction and attempts in peacetime to destroy national defense material, premises, or utilities were made punishable by fines of not more than \$10,000 or imprisonment for not more than ten years or both.

Title I of the Alien Registration Act, enacted June 28, 1940, c. 439, 54 Stat. 670, dealt with acts designed to impair or influence the loyalty, morale, or discipline of the armed forces of the United States by certain specified acts; with certain forms of advocacy of the overthrow of the Government of the United States by force or violence; and with attempts and conspiracies to commit any of the prohibited acts, none of which involves force or violence. Conspiracies to commit any of these offenses were made punishable to the same degree as the substantive offenses defined, by imprisonment for not more than ten years or fines of not more than \$10,000 or both. 54 Stat. 671, 18 U. S. C. Sec. 13. Finally, the Act requiring certain foreign-controlled and civilian military organizations to register with the Attorney General, enacted October 17, 1940, c. 897, 54 Stat. 1201, carried a penalty section which prescribed the same maximum punishments as Section 11 of the Selective Training and Service Act, except that the possible fine for false statements was limited to \$2,000. 54 Stat. 1204, 18 U. S. C. Sec. 17.

Title I of the Alien Registration Act is most closely related to the conspiracy provision of the Selective Training and Service Act, in that it seeks to safeguard the armed forces themselves against subversive activity; but the entire series of enactments is clearly designed to strengthen

the criminal laws in their application to espionage, sabotage, and subversive activity affecting the defense effort during the emergency that was to ripen into war. Penal provisions were made uniformly more stringent than before; offenses previously recognized only in time of war were extended; and new safeguards were erected against the infiltration of hostile activity from abroad. It is inconceivable in the light of this program of strengthening the criminal laws as part of the legislative program dealing with defense, which called the Selective Training and Service Act into being, that Congress should have enacted a conspiracy clause in this Act with a weakening effect, if any at all, upon the preexisting law. The punishment for non-violent conspiracies to violate the Act (under Section 37 of the Criminal Code) would under that interpretation be left markedly out of line with the punishment for other offenses of like nature, including the other punishments prescribed in the Act itself.

The resort to other, related legislation for light upon the proper interpretation of a statutory provision is, of course, not new. Aside from the familiar principle that all acts bearing upon a given subject should be construed together (*Helvering v. Morgan's, Inc.*, 293 U. S. 121, 128; *United States v. Babbit*, 66 U. S. 55, 60), the discovery of legislative policy by reference to

successive statutes which reveal it, is recognized in this Court as a realistic and valuable aid to statutory interpretation. *United States v. American Trucking Ass'ns, supra*, pp. 544-545; *Federal Housing Administration v. Burr*, 309 U. S. 242, 245; *Keifer & Keifer v. Reconstruction Finance Corp.*, 306 U. S. 381, 389-392; *United States v. Sweet*, 245 U. S. 563, 572.

(C) It cannot be said, in the light of other conspiracy statutes enacted by Congress in modern times, that the provision for a maximum punishment of five years' imprisonment or a \$10,000 fine or both, contained in Section 11 of the Selective Training and Service Act, is unusually severe in relation to conspiracies, such as that of petitioner and his associates in this case, which are not subversive or seditious but simply criminal in character and do not contemplate the use of force or violence. Eight special conspiracy statutes dealing with offenses of this nature have been found in the United States Code. Of the conspiracies denounced, only those in restraint of interstate commerce (Act of July 2, 1890, c. 647, §§1-3, 26 Stat. 209; 15 U. S. C. §§1-3) and of import trade (Act of Aug. 27, 1894, c. 349, Sec. 73, 28 Stat. 570, as amended, 15 U. S. C. Sec. 8), together with conspiracies to make false statements concerning veterans' benefits (Act of Mar. 20, 1933, c. 3, Sec. 15, 48 Stat. 11, 38 U. S. C. Sec. 715), are punishable less severely.

Conspiracy to defraud the Tennessee Valley Authority (Act of May 18, 1933, c. 32, Sec. 21, 48 Stat. 68, 16 U. S. C. Sec. 831t (c)) is punishable by 5 years' imprisonment or a \$5,000 fine or both; conspiracy to commit any of several offenses against the Farm Credit Administration (Act of June 16, 1933, c. 98, Sec. 64, 48 Stat. 269, as amended, 12 U. S. C. Sec. 1138d (f)) is punishable either by five years' imprisonment or a \$10,000 fine or both, or in some instances a maximum of two years' imprisonment or a fine or both; and, since 1918, conspiracy to defraud the United States by means of a false claim (Act of Mar. 4, 1909, c. 321, Sec. 35 (R. S. Sec. 5438), as amended Oct. 23, 1918, c. 194, 40 Stat. 1015, 18 U. S. C. Sec. 83) has carried a possible punishment of ten years' imprisonment or a fine of \$10,000 or both. Conspiracy to violate the National Stolen Property Act (Act of Aug. 3, 1939, c. 413, Sec. 5, 53 Stat. 1179, 18 U. S. C. Sec. 418a) may be similarly punished. A conspiracy to injure another in the enjoyment of his civil rights (Act of Mar. 4, 1909, c. 321, Sec. 19, 35 Stat. 1092, 18 U. S. C. Sec. 51) carries the same punishment, except that the fine is limited to \$5,000.

It is clear from the foregoing summary that punishments for non-violent conspiracy, prescribed during the present century, have been at least as severe as those provided in Section 11 of the Selective Training and Service Act, with two

minor exceptions.* In this connection again, the legislative policy emerges from statutes *in pari materia*, and an interpretation of Section 11 in consonance with this policy seems clearly to be called for. To remit conspiracies to violate the Selective Training and Service Act to the penalty provision of Section 37 of the Criminal Code would be to perpetuate an anachronism which Congress attempted to remove. In sentencing for conspiracy as for the substantive offenses defined in Section 11, of course, the courts are expected to take into account the character of the particular offense committed, as did the trial court in the present case. Inflexibly harsh sentences need not result from the scale of punishments provided.

* Statutes punishing conspiracies to commit specific offenses involving the use of force or violence provide for the following punishments: ten years' imprisonment or a \$10,000 fine or both for conspiracy to interfere by violence with trade or commerce and for conspiracy to cast away a vessel (Act of June 18, 1934, c. 569, Sec. 2, 48 Stat. 979, 18 U. S. C. Sec. 420a; Act of Mar. 4, 1909, c. 321, Sec. 296 (R. S. Sec. 5364), 35 Stat. 1146, 18 U. S. C. Sec. 487); six years' imprisonment or a fine of \$5,000 or both for conspiracies to intimidate witnesses, etc., and to prevent an officer of the Government from performing his duties (Act of Mar. 4, 1909, c. 321, Sec. 136 (R. S. Sec. 5406), 35 Stat. 1113, 18 U. S. C. Sec. 242; *id.*, Sec. 21 (R. S. Sec. 5518), 35 Stat. 1092, 18 U. S. C. Sec. 54); and three years' imprisonment or a \$5,000 fine or both for conspiracy to injure the property of a foreign government (Act of June 15, 1917, c. 30, tit. VIII, Sec. 5, 40 Stat. 226, 22 U. S. C. Sec. 234).

— In addition to the foregoing, legislation defining a particular type of conspiracy uniformly prescribes the same punishment for it as that specified for the corresponding substantive offense, if such an offense exists. Of the statutes enumerated above, including those in the footnote relating to conspiracies to engage in force or violence, eight prescribe such identity of punishment. These are the acts punishing conspiracies against the Farm Credit Administration and the Tennessee Valley Authority, the several conspiracies in restraint of trade or to interfere with trade, conspiracy to make false statements concerning claims for veterans' benefits, conspiracy to cast away a vessel, and conspiracy to violate the National Stolen Property Act. In prescribing equality of punishment for conspiracies and for the substantive offenses defined therefore, Section 11 of the Selective Training and Service Act is in accord with general legislative policy. It would defeat that policy to leave non-violent conspiracies in violation of the Act punishable only under Section 37 of the Criminal Code.

(D) The tendency also is strong in conspiracy legislation enacted by the Congress, to return to the common law doctrine that an overt act is not essential to the offense. Cf. *Nash v. United States*, 229 U. S. 373, 378; see also opinion of the

court below, R. 146. Of the statutes just reviewed, only the National Stolen Property Act and the act punishing conspiracies to injure the property of a foreign government include an overt act in the definition of the offense. In addition, Section 37 of the Criminal Code and Section 4 of the Espionage Act which deals in part with offenses closely akin to treason, require an overt act. All of the other existing conspiracy statutes, including Title I of the Alien Registration Act adopted just two months before the Selective Training and Service Act and dealing as regards conspiracy with somewhat similar problems, omit this requirement. There is every reason to conclude, therefore, that Congress in enacting the conspiracy clause of Section 11 designedly omitted the requirement of an overt act and that the elimination of this requirement with respect to conspiracies not contemplating violence was intended. As previously pointed out (*supra*, pp. 22-24), the contrary view, restricting the clause to conspiracies involving force or violence, deprives it of significance; for with respect to the omission of the requirement of an overt act, as with regard to the provision for punishment, Section 6 of the Criminal Code already prescribed the same pattern.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgments of conviction should be affirmed.

CHARLES FAHY,
Solicitor General.

TOM C. CLARK,
Assistant Attorney General.

ROBERT S. ERDAHL,
Special Assistant to the Attorney General.

RALPH F. FUCHS,
LEON ULMAN,
Department of Justice.

NOVEMBER, 1944

APPENDIX

Section 5 of the Selective Draft Act of May 18, 1917, 40 Stat. 76, as amended August 31, 1918, 40 Stat. 955 (50 U. S. C. App., Sec. 205) in pertinent part reads as follows:

* * * and any person who shall willfully fail or refuse to present himself for registration or to submit thereto as herein provided shall be guilty of a misdemeanor and shall, upon conviction in a district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than one year and shall thereupon be duly registered.

Section 6 of the Selective Draft Act of 1917, so far as pertinent, provides as follows:

Any person charged as herein provided with the duty of carrying into effect any of the provisions of this Act or the regulations made or directions given thereunder who shall fail or neglect to perform such duty; and any person charged with such duty or having and exercising any authority under said Act, regulations, or directions, who shall knowingly make or be a party to the making of any false or incorrect registration, physical examination, exemption, enlistment, enrollment, or muster; and any person who shall make or be a party to the making of any false statement or certificate as to the fitness or liability of himself or any other person for service under the provisions of this Act, or regulations made by

the President thereunder, or otherwise evades or aids another to evade the requirements of this Act or of said regulations, or who, in any manner, shall fail or neglect fully to perform any duty required of him in the execution of this Act, shall, if not subject to military law, be guilty of a misdemeanor, and upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than one year, or, if subject to military law, shall be tried by court-martial and suffer such punishment as a court-martial may direct.

Section 3 of the Espionage Act of June 15, 1917, c. 30, 40 Stat. 217, 219, 41 Stat. 1359 (50 U. S. C. 33), provides as follows:

Whoever, when the United States is at war, shall willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies and whoever, when the United States is at war, shall willfully cause or attempt to cause insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or shall willfully obstruct the recruiting or enlistment service of the United States, to the injury of the service of the United States, shall be punished by a fine of not more than \$10,000 or imprisonment for not more than twenty years, or both.

Section 4 of the Espionage Act provides as follows:

If two or more persons conspire to violate the provisions of sections two or three

of this title, and one or more of such persons does any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as in said sections provided in the case of the doing of the act the accomplishment of which is the object of such conspiracy. Except as above provided conspiracies to commit offenses under this title shall be punished as provided by section thirty-seven of the Act to codify, revise, and amend the penal laws of the United States approved March fourth, nineteen hundred and nine.

Section 6 of the Criminal Code (R. S. § 5336, Mar. 4, 1909, c. 321, § 6, 35 Stat. 1089, 18 U. S. C. 6) provides as follows:

If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined not more than \$5,000 or imprisoned not more than six years, or both.



SUPREME COURT OF THE UNITED STATES.

No. 30.—OCTOBER TERM, 1944.

Willard Irwin Singer and Martin H. Singer, Petitioners,
vs.
The United States of America.

[January 2, 1945.]

Mr. Justice DOUGLAS delivered the opinion of the Court.

Petitioners are father and son. They and one Walter Weel were indicted in one count charging a conspiracy to aid Willard I. Singer in evading service in the armed forces. No overt act was alleged. A demurrer to the indictment was overruled which claimed that an overt act was necessary. Petitioners were tried before a jury, found guilty and sentenced. Petitioner Willard I. Singer received a sentence of one year and a day; petitioner Martin H. Singer received a suspended sentence and was placed on probation for two years. Motions in arrest of judgment and for a new trial were denied. 49 F. Supp. 912. The judgments of conviction were affirmed by the Circuit Court of Appeals. 141 F. 2d 262. The case is here on a petition for a writ of certiorari which we granted, limited to the question whether the conspiracy charged constitutes an offense under § 11 of the Selective Training and Service Act of 1940, 54 Stat. 885, 894-895, 50 U. S. C. App. § 311.

The relevant part of § 11 reads as follows:

"Any person charged as herein provided with the duty of carrying out any of the provisions of this Act, or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said Act, rules, regulations, or directions who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate as to the fitness or unfitness or liability or nonliability of himself or any other person for service under the provisions of this

Act; or rules, regulations, or directions made pursuant thereto, or who otherwise evades registration or service in the land or naval forces or any of the requirements of this Act, or who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces or any of the requirements of this Act, or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect to perform any duty required of him under or in the execution of this Act, or rules or regulations made pursuant to this Act, or any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto, *or conspire to do so*, shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than \$10,000, or by both such fine and imprisonment

* * * * *

(Italics added.)

The section does not require an overt act for the offense of conspiracy. It punishes conspiracy "on the common law footing." *Nash v. United States*, 229 U. S. 373, 378. Hence the indictment is sufficient if the words "or conspire to do so" extend to all conspiracies to commit offenses against the Act. It is insufficient if the conspiracy clause is limited to conspiracies to "hinder or interfere in any way by force or violence" with the administration of the Act. If it is so limited then it would have been necessary to sustain the indictment under § 37 of the Criminal Code, 18 U. S. C. § 88, which requires the commission of an overt act.¹ See *United States v. Rabinowich*, 238 U. S. 78, 86.

Though the matter is not free from doubt, we think the conspiracy clause of § 11 is not limited but embraces all conspiracies to violate the Act. That is the view of the Court of Appeals for the Second Circuit (*United States v. O'Connell*, 126 F. 2d 807) as well as the court below. We think that construction is grammatically permissible and conforms with the legislative scheme.

Seven offenses precede the conspiracy clause. Each is set off by a comma. A comma also precedes the conspiracy clause and separates it from the force and violence provision just as the latter is separated by a comma from the clause which precedes it. The

¹ That section provides:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than \$10,000, or imprisoned not more than two years, or both."

punctuation of the sentence indicates that the disjunctive conspiracy clause is the last independent clause of a series not a part of the preceding clause. A subject of "conspire" must be supplied however the conspiracy clause is read. It is true that the subject must be plural and that the subject of each of the preceding clauses is singular except "any person or persons" in the force and violence clause. But it does not follow that the conspiracy clause is hitched solely to the preceding clause. When read as applicable to all the substantive offenses, the verb "conspire" is proper since some of the subjects would be singular and some plural.

A question remains concerning the word "so". The structure of the sentence as a whole suggests that the reference is to all the offenses previously enumerated. The seven offenses which precede the conspiracy clause are substantive offenses. Each carries the same penalty and is punishable in the same manner. The conspiracy clause comes last and is separated from the preceding one by a comma. If the word "so" is read restrictively, then one type of conspiracy is set apart for special treatment. If our construction is taken, a rational scheme results with the same maximum penalties throughout—all types of conspiracies being treated equally, just as the substantive offenses are treated alike. No persuasive reason has been advanced why the words "conspire to do so" should not carry their natural significance. The principle of strict construction of criminal statutes does not mean that they must be given their narrowest possible meaning. *United States v. Giles*, 300 U. S. 41, 48.

The legislative history throws only a little light on this problem of the construction of § 11. What appears is a brief statement by Senator Sheppard, Chairman of the Senate Committee on Military Affairs, who explained the bill on the floor of the Senate. He stated that the section which later became § 11 of the present Act "contains the penalty provisions of the bill, which are substantially the same as those of the World War act. Experience with the World War provisions shows that they worked satisfactorily in providing the necessary protection." 86 Cong. Rec. 10095. The Selective Draft Act of 1917, 40 Stat. 76, 50 U. S. C. App. § 201 *et seq.*, contained no conspiracy provision. And the penalties prescribed for the substantive offenses were milder than those contained in the present Act.² Conspiracies to commit non-violent offenses were

² The 1917 Act punished various substantive offenses of the kind covered by § 11 of the present Act by imprisonment for not more than one year. See §§ 5 and 6.

prosecuted under § 37 of the Criminal Code which, as we have noted, requires an overt act.³ Conspiracies involving the use of force were prosecuted under § 6 of the Criminal Code, 35 Stat. 1089, 18 U. S. C. § 6, which punishes conspiracies "by force to prevent, hinder, or delay the execution of any law of the United States."⁴ Sec. 37 of the Criminal Code provides a punishment of not more than two years' imprisonment or a fine of \$10,000 or both. Sec. 6 of the Criminal Code provides a punishment of not more than six years' imprisonment or a \$5000 fine, or both. Sec. 11 of the present Act provides imprisonment for not more than five years or a fine of \$10,000 or both. Both § 37 and § 6 of the Criminal Code were in force when the present Act was adopted. The addition of the conspiracy clause of § 11 was a departure from the 1917 Act and a substantial departure at that. Moreover, the "World War provisions" which, according to Senator Sheppard, had provided "the necessary protection" were certainly not the provisions of the 1917 Act alone but the conspiracy statutes as well. Hence, we do not take his statement to mean that the penalty provisions of § 11 are substantially the same as those contained in the 1917 Act. We read his somewhat ambiguous comments as indicating that he was comparing the provisions of § 11 with the provisions of the 1917 Act plus the provisions of other statutes which were employed in enforcing that Act. Thus Senator Sheppard's statement suggests that § 11 was designed to catalogue the various offenses against the Act.⁵ It suggests that the purpose of including a conspiracy clause in § 11 was to furnish a single basis for prosecuting all conspiracies to commit offenses against the Act. That results in punishments for some conspiracies being

³ See *United States v. McHugh*, 253 Fed. 224; *Anderson v. United States*, 269 Fed. 65; *O'Connell v. United States*, 253 U. S. 142; *Goldman v. United States*, 245 U. S. 474.

⁴ See *Enfield v. United States*, 261 Fed. 141; *Reeder v. United States*, 262 Fed. 36. But see *Haywood v. United States*, 268 Fed. 795.

Conspiracies were also prosecuted under § 4 of the Espionage Act of June 15, 1917, 40 Stat. 217, 219, 41 Stat. 1359, 50 U. S. C. § 37, which like § 37 of the Criminal Code requires an overt act. See *Frohwerk v. United States*, 249 U. S. 204; *Pierce v. United States*, 252 U. S. 239. But that section is applicable only in time of war and hence was not operative when the present Act became the law on September 16, 1940.

⁵ Whether, as assumed in *United States v. Offutt*, 127 F. 2d 336, there may be conspiracies to violate § 11 which can still be prosecuted under § 37 of the Criminal Code is a question we do not reach.

If only one of the statutes is applicable to a conspiracy to violate § 11, the latter under which petitioners were convicted is controlling, as it is a later statute prescribing precise penalties for specified offenses. *Callahan v. United States*, 285 U. S. 515, 518.

increased. But there was likewise an increase in the penalties for substantive offenses. Yet under our interpretation the sanctions provided by § 11 are substantially the same as the sum of the various sanctions provided for the enforcement of the 1917 Act.

The United States suggests that if the conspiracy clause of § 11 is construed so as to apply only to conspiracies to obstruct the Act by force and violence it would merely duplicate § 6 of the Criminal Code and have no effect except to decrease the maximum imprisonment for the offense from six years to five. It is said in reply, however, that under the earlier Act it was uncertain whether conspiracies contemplating the use of force in interfering with its administration could be prosecuted under § 6 of the Criminal Code. Cf. *Reeder v. United States*, 262 Fed. 36, with *Haywood v. United States*, 268 Fed. 795, 799. And it is argued from that fact that the conspiracy clause of § 11 was added to dispel the uncertainty. That is left to conjecture. Though we assume that it was a reason for adding a conspiracy clause to § 11, we cannot conclude that the conspiracy clause which was fashioned is so limited. And where another interpretation is wholly permissible, we would be reluctant to give a statute that construction which makes it wholly redundant. Only a clear legislative purpose should lead to that result here.

Nor do we find force in the suggestion that the conspiracy clause was added merely to fill in gaps left by § 6 of the Criminal Code which covers only conspiracies to obstruct by force "the execution of any law of the United States." It is said that *United States v. Eaton*, 144 U. S. 677, established as a principle of federal criminal law that a provision which only punishes violations of a "law" does not cover violations of rules or regulations made in conformity with that law. It is therefore argued that § 6 of the Criminal Code does not embrace violations of rules or regulations and that § 11 filled that gap by adding "rules or regulations" to the force and violence clause. Here again the legislative history leaves that question wholly to conjecture. *United States v. Eaton* turned on its special facts, as *United States v. Grimaud*, 220 U. S. 506, 518-519, emphasizes. It has not been construed to state a fixed principle that a regulation can never be a "law" for purposes of criminal prosecutions. It may or may not be, depending on the structure of the particular statute. The *Eaton* case involved a statute which levied a tax on oleomargarine and regulated in detail oleomargarine manufacturers. Sec. 5 of the statute

provided for the keeping of such books and records as the Secretary of the Treasury might require. But it provided no penalty for non-compliance. Other sections, however, laid down other requirements for manufacturers and prescribed penalties for violations. Sec. 20 gave the Secretary the power to make "all needful regulations" for enforcing the Act. A regulation was promulgated under § 20 requiring wholesalers to keep a prescribed record. The prosecution was for non-compliance with that regulation. Sec. 18 imposed criminal penalties for failure to do any of the things "required by law". The Court held that the violation of the regulation promulgated under § 20 was not an offense. It reasoned that since Congress had prescribed penalties for certain acts but not for the failure to keep books the omission could not be supplied by regulation. And Congress had not added criminal sanctions to the rules promulgated under § 20 of that Act. The situation here is quite different. Sec. 11 of the present Act makes it a crime to do specified acts, either by way of omission or commission, in violation of the Act or the rules or regulations issued under it. Thus it is a felony for a person to "fail or neglect to perform any duty required of him under or in the execution of this Act, or rules or regulations made pursuant to this Act." Sec. 11 is therefore a law of the United States which imposes criminal sanctions for disobedience of the selective service regulations. Since Congress has made the violation of regulations a felony, it can hardly be contended that those regulations are not a "law" for the purposes of § 6 of the Criminal Code. But though we assume that *United States v. Eaton* was a reason for adding a conspiracy clause to § 11, we cannot assume that the one which was added had the narrow scope suggested. Whatever the reason, words mean what they say. And if we give the words "conspire to do so" their natural meaning, we do not make the Act a trap for the innocent.

We have been advised that Martin H. Singer died on October 1, 1944. The writ is accordingly dismissed as to him (*Menken v. Atlanta*, 131 U. S. 405; *United States v. Johnson*, 319 U. S. 503, 520) and the cause is remanded to the District Court for such disposition as law and justice require. *United States v. Pomeroy*, 152 Fed. 279, rev'd 164 Fed. 324; *United States v. Dunne*, 173 Fed. 254.

The judgment as respects Willard I. Singer is

Affirmed.

SUPREME COURT OF THE UNITED STATES.

No. 30.—OCTOBER TERM, 1944.

Willard Irwin Singer and Martin H. Singer, Petitioners, vs. United States of America. On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[January 2, 1945.]

Mr. Justice FRANKFURTER, dissenting:

In the past, to soften the undue rigors of the criminal law, courts frequently employed canons of artificial construction to restrict the transparent scope of criminal statutes. I am no friend of such artificially restrictive interpretations. Criminal statutes should be given the meaning that their language most obviously invites unless authoritative legislative history or absurd consequences preclude such natural meaning. There are surely deep considerations of policy why the scope of criminal condemnation should not be extended by a strained reading. The natural reading of the conspiracy provision of § 11 of the Selective Service Act of 1940¹ confines its application to the immediately preceding clause which

154 Stat. 885, 894, 50 U. S. C. App. § 311. "Any person charged as herein provided with the duty of carrying out any of the provisions of this Act, or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said Act, rules, regulations, or directions who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate as to the fitness or unfitness or liability or nonliability of himself or any other person for service under the provisions of this Act, or rules, regulations, or directions made pursuant thereto, or who otherwise evades registration or service in the land or naval forces or any of the requirements of this Act, or who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces or any of the requirements of this Act, or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect to perform any duty required of him under or in the execution of this Act, or rules or regulations made pursuant to this act, or any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto, or conspire to do so, shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than \$10,000, or by both such fine and imprisonment"

punishes "any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto." Since no absurd consequences preclude the indicated natural reading of this criminal statute and since all available extraneous aids confirm the rendering which the text invites, I think it should be given it.

It is difficult for me to believe that if one were reading § 11 without consciousness of the problem now before us and merely as a matter of English one would make the "so" in the phrase "conspire to do so" relate back to all that is contained in the twenty-two preceding lines rather than to the "force or violence" clause immediately preceding. The structure of the sentence, grammar, and clarity of expression combine to attribute to the phrase "to do so" a limited reference instead of making "so" carry the burden of the whole paragraph as antecedent. Good sense reinforces these textual considerations. It is not de an offense to conspire to violate not only the seven substantive offenses enumerated by Congress but also the multitudinous "rules and regulations". There is an obvious difference between conspiracies to violate by force and violence any rule issued under the Act and a mere unexecuted arrangement between two people peacefully to escape one of such rules.

All extraneous aids confirm rather than contradict this construction.

The only authoritative legislative commentary we have on § 11 is the statement by Senator Sheppard, Chairman of the Committee on Military Affairs, in a formal speech expounding the various provisions of the Act. There is every reason to believe that Senator Sheppard's speech had behind it the authority of those who framed this legislation and who were cognizant of the prior legislation upon which they were building. Senator Sheppard stated that § 11 "contains the penalty provisions of the bill, which are substantially the same as those of the World War act. Experience with the World War provisions shows that they worked satisfactorily in providing the necessary protection." 86 Cong. Rec. 10095. It is to be noted that Senator Sheppard spoke of the "World War provisions" and thereby evidently had in mind the various enactments available for dealing with interferences with the raising of an army.

In its arsenal of punishment the Government had provisions dealing specifically with conspiracies affecting the recruiting of

an army as well as the all-comprehending conspiracy statute outlawing conspiracies to commit any offense against the United States—an old enactment known to every tyro of federal law since Reconstruction days (R. S. § 5440, Act of March 2, 1867). What then were the specific conspiracy provisions which were "substantially" drawn upon for this war from the legislation of the First World War? (a) Section 6 of the Criminal Code, 18 U. S. C. § 6, punished conspiracies "by force to prevent, hinder, or delay the execution of any law of the United States . . ." with a fine of \$5,000 or imprisonment for six years or both. No overt act was required for prosecution for this conspiracy. (b) Section 4 of the Espionage Act, 40 Stat. 217, 219, 50 U. S. C. § 34, outlawed conspiracies to violate §§ 2 and 3 of the Espionage Act, to be punished by a fine of \$10,000, imprisonment for twenty years or both. Section 4 required an overt act. This section survived the last war but was not, however, operative when the Selective Service Act was enacted because it applies only "when the United States is at war."

If the conspiracy clause in § 11 is confined to offenses involving force or violence, the provisions as to conspiracy remain substantially the same under the 1940 Act as they were during the last war. Conspiracies to commit non-violent offenses—that is, conspiracies to commit the range of substantive offenses, some of them rather minor in character, contained in § 11—are of course still punishable under the general conspiracy provision, to wit § 37 of the Criminal Code, as was the situation during the last war. Offenses of violence which fell within § 6 of the Criminal Code in 1917 are now included within § 11, neither of which requires an overt act. The punishment for these conspiracies of violence is substantially similar—a \$5,000 fine and six years imprisonment under § 6 and a \$10,000 fine and five years imprisonment under § 11. Senator Sheppard's desire for penalties "which are substantially the same as . . . the World War provisions" would thus appear to be accomplished.

But the Government urges that if § 11 of the 1940 Act merely hits a conspiracy to do an act of violence, the conspiracy clause will be redundant in that it will accomplish nothing except to increase the limit of the fine from \$5,000 to \$10,000 and to decrease the allowable imprisonment from six years to five years. This argument wholly overlooks two important changes effected by the conspiracy provision of the 1940 Act. The cases had raised doubt whether § 6 of the Criminal Code was properly applicable

to conspiracies to violate by force the Draft Act. Compare *Reeder v. United States*, 226 Fed. 36, cert. denied, 252 U. S. 581, with *Haywood v. United States*, 268 Fed. 795, 799, cert. denied, 256 U. S. 689. By specific inclusion of a conspiracy provision in the Selective Service Act, instead of leaving it to the generality of § 6 of the Criminal Code, the doubt was completely eliminated. That in itself saves the conspiracy provision from mere redundancy, for it gives it, as a matter of law enforcement, an important function.

The Government also fails to take into account that the conspiracy provision of § 11 added considerably to the scope of § 6—that the net of § 11 would catch many offenders left free by § 6 of the Criminal Code. The latter merely reaches conspiracies to obstruct by force the operation of "any law of the United States". For more than half a century, ever since *United States v. Eaton*, 144 U. S. 677, it has been the settled principle of Federal criminal law that a provision merely punishing violation of a "law" does not cover violations of rules or regulations made in conformity with that law. See *United States v. Grimaud*, 220 U. S. 506, 518-519. Section 6, therefore, does not cover violations of rules or regulations. Section 11 of the 1940 Act made an important addition in that it punishes conspiracies to interfere forcibly not merely "with the administration of this Act" but also with "the rules or regulations made pursuant thereto".

United States v. Eaton is not a judicial sport. It is the application of a principle which has been undeviatingly applied by this Court—most recently in *Viereck v. United States*, 318 U. S. 236, 241—and upon the basis of which Congress legislates. *In re Kollock*, 165 U. S. 526; *United States v. Grimaud, supra*; *United States v. George*, 228 U. S. 14. The principle is that a crime is defined by Congress, not by an executive agency. See *United States v. Smull*, 236 U. S. 405, 409. "Where the charge is of crime, it must have clear legislative basis." *United States v. George, supra* at 22. It is only when Congress in advance prescribes criminal sanctions for violations of authorized rules that violations of such rules can be punished as crimes. It is this far-reaching distinction which, it was pointed out in the *Grimaud* case, put on one side the doctrine of the *Eaton* case, where violation of rules and regulations was not made criminal, and on the other side legislation such as that enforced in the *Grimaud* case where Congress specifically provided that "any violation of the provisions of this act or such rules and regulations [of the Secretary of Agriculture] shall be

punished." (Italics added by Mr. Justice Lamar.) *United States v. Grimaud, supra*, at 515. Congress consciously gave an effect to the conspiracy clause of § 11 which is absent from that of § 6 of the Criminal Code.

There is another strong ground for concluding that the draftsmen of the Selective Service Act did not intend by its dubious language to extend the conspiracy provision beyond violent attempts and to sweep into this clause all conspiracies to violate the Act or any of its regulations. Whenever Congress desires to make a conspiracy provision apply to a whole series of substantive offenses, it does so explicitly. Either the conspiracy provision is set off in a separate section or subsection made applicable to all preceding sections, or else clear words of reference to "any provision" or, "any of the acts made unlawful" are employed. See National Stolen Property Act, § 7, 53 Stat. 1178, 1179, 18 U. S. C. § 418a; Farm Credit Act, § 64(f), 48 Stat. 257, 269, 12 U. S. C. § 1138(f); Sherman Act, §§ 1-3, 26 Stat. 209, as amended, 15 U. S. C. §§ 1-3; Act of July 31, 1861, R. S. § 1980, 8 U. S. C. § 47. The absence of such explicitness in the Selective Service Act is a strong indication that no such sweeping scope was intended.

A statute defining specific crimes presents to courts a very different duty of construction than do regulatory enactments wherein Congress recites a broad policy in light of which the specific provisions of the regulatory scheme must be construed. In the latter situation, a particular provision of a statute derives meaning from the broad policy expressed. See *Phelps Dodge Corp. v. Labor Board*, 313 U. S. 177, 194. In a criminal statute like the one now under review language defining the crime is self-contained—there is no background of broad policy to guide the duty of giving such language its easy, most natural meaning.

In the past, decisions undoubtedly worked hard to narrow the scope of a criminal statute. It is against the whole tenor of reading a criminal statute to work hard to give it the broadest possible scope. The responsibility of Congress for manifesting its will is ill served by easy-going judicial construction of criminal statutes.

These views call for reversal of the judgment.

Mr. Justice ROBERTS, Mr. Justice MURPHY and Mr. Justice RUTLEDGE join in this dissent.